

EXHIBIT B

HEARING
IN RE PETITION OF BIG FISH GAMES

August 09, 2018

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<p style="text-align: right;">Page 2</p> <p>1 A P P E A R A N C E S</p> <p>2 EMILY JOHNSON HENN, ESQ.</p> <p>3 Covington & Burling LLP</p> <p>4 333 Twin Dolphin Drive</p> <p>5 Redwood Shores, CA 94065</p> <p>6 (650) 632-4715</p> <p>7 On behalf of Big Fish Games, Inc.</p> <p>8</p> <p>9 ALEXANDER G. TIEVSKY, ESQ.</p> <p>10 Edelson PC</p> <p>11 350 North LaSalle Street, 14th Floor</p> <p>12 Chicago, IL 60654</p> <p>13 (312) 589-6379</p> <p>14 On behalf of Cheryl Kater</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 P R O C E E D I N G S</p> <p>2 (On the record)</p> <p>3 CHAIR SIZEMORE: We have Big Fish Games,</p> <p>4 Incorporated, a petition for declaratory order. And</p> <p>5 this is continued from our July meeting.</p> <p>6 MR. CONSIDINE: Correct.</p> <p>7 CHAIR SIZEMORE: And I know that we made</p> <p>8 requests for additional information at that July</p> <p>9 meeting and we got a lot and some of it was just in the</p> <p>10 last few days.</p> <p>11 So I'll let you, Brian, kind of run this,</p> <p>12 steer us through this process; and -- and we'll --</p> <p>13 we'll work through it.</p> <p>14 MR. CONSIDINE: Thank you, Mr. Chair.</p> <p>15 And for the record again, Brian Considine,</p> <p>16 legal and legislative manager. I figure I'll give a</p> <p>17 brief overview as kind of what I see as maybe the best</p> <p>18 way to -- to do this, especially to create a helpful</p> <p>19 record moving forward. But you're right, we had our</p> <p>20 July meeting, and at the July meeting, Mr. Chair, you</p> <p>21 came out and you asked three things, but really two</p> <p>22 very specific things was for information related to a</p> <p>23 thing of value and what it means under Washington State</p> <p>24 law based on the parties' reading of it; and two, what</p> <p>25 constitutes a necessary party in our law and the</p>

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<p style="text-align: right;">Page 5</p> <p>1 rule -- and then I quote the rule in the memo, and I'm 2 not going to go through all of that unless you want me 3 to, and then any other factors you believe the 4 Commission should receive. 5 And so then based off of that, I think it's 6 just quickly to read into the record, but what I 7 figure, we'll go through the documents that we have, 8 see if there's any questions related to that. Then 9 we'll take the, what I'm calling the procedural issue 10 first, the necessary party. Because of the way that 11 the law is written, if somebody is a necessary party, 12 you are prevented from moving forward with a 13 declaratory order. And so we'll -- I'll quickly brief 14 that. 15 We'll have any parties -- Ms. Brinkmann is -- 16 could not make it today, but another attorney in her 17 firm, Emily Henn, is here, and she'll be presenting 18 on -- on behalf of the petitioner. Mr. Tievsky is 19 still here for Ms. Kater. And then only specifically 20 talk about necessary party. Anybody else after those 21 two individuals want to talk, clearly you'll have 22 public comment. Kind of close the comment on -- on 23 necessary party and then move to thing of value. 24 That's the more substantive meat of the issue. 25 Have the same sort of thing, the petitioner</p>	<p style="text-align: right;">Page 7</p> <p>1 MS. HENN: -- the issues. 2 CHAIR SIZEMORE: Okay. 3 MS. HENN: Thank you. 4 CHAIR SIZEMORE: Mr. Tievsky. 5 MR. TIEVSKY: If I -- it depends on how many 6 questions the Commission has. 7 CHAIR SIZEMORE: Sure. 8 MR. TIEVSKY: For -- for my initial 9 presentation, no, certainly not. 10 CHAIR SIZEMORE: Okay, thank you. 11 MR. CONSIDINE: And just so I can put it on 12 the record, both representatives said that ten minutes 13 should be sufficient, but it depends on questions and 14 kind of how -- 15 CHAIR SIZEMORE: Okay. 16 MR. CONSIDINE: -- it goes. 17 CHAIR SIZEMORE: Sure. 18 MR. CONSIDINE: So quickly running through 19 what's in your packet, because there was a lot of 20 things that came in, Tab A, I believe, should be the 21 transcript that felt it was probably helpful to have 22 the transcript from just -- it's not the full meeting, 23 it's just the portion that dealt with the petition. 24 Tab B is all of the documents that you had 25 before you at the July meeting, so that would be the</p>
<p style="text-align: right;">Page 6</p> <p>1 will go first, Mr. Tievsky, anybody else; and then see 2 if there's any other topics that you want some extra 3 comment or -- on. And of course you'll know how to ask 4 questions on all of that. And the parties are ready to 5 answer your questions as best as possible. So that -- 6 that's kind of my plan for -- for today. 7 And then after you feel you've received 8 everything that you need, you've asked all the 9 questions, you'll be able to go into closed session, 10 just like last time, with our AAG Mr. Kernutt and be 11 able to have your conversation and come out and -- and 12 announce kind of how you would like to move forward or 13 if you want to make a decision. 14 And I'm happy to save kind of the procedural 15 posture at the end, but just up front, the same options 16 that were before you last month are the same options 17 before you this month. And I'm happy to run through 18 them before you break for your closed session. 19 CHAIR SIZEMORE: Okay. And, Brian, before you 20 move on to the next, I just informally I guess I would 21 like to ask those that will be coming forward on this 22 topic, do you anticipate needing more than ten minutes? 23 MS. HENN: No, I think that would be adequate 24 time to address -- 25 CHAIR SIZEMORE: Okay.</p>	<p style="text-align: right;">Page 8</p> <p>1 petition from Big Fish and the letters from Double 2 Down, Incorporated, and I think Huge, Incorporated, 3 on -- in favor of the petition, and then Ms. Kater's 4 comments as well. 5 Tab C should be a citizen, I -- she has 6 identified that she lives in Texas. It -- she 7 submitted the consumer protection complaint with the 8 Attorney General's Office. And then after that was 9 completed, I believe the AG's office let her know that 10 we had this petition going on, so she wanted to submit 11 all of the documents under Tab C as her comment, but 12 she's not expected to appear today or -- or, I don't 13 think, at all. 14 D, Tab D should be the petitioner's response 15 to your questions related to necessary party and thing 16 of value. Tab E should be Ms. Kater's response on -- 17 Mr. Tievsky's response on Mr. -- on behalf of Ms. Kater 18 that also deals with thing of value and necessary 19 party. 20 Tab F should be a statement from a woman 21 named Susie Kelly relating to her customer experience 22 with, I believe, Big Fish Casino. Tab G should be a 23 letter submitted by the Entertainment Software 24 Association. And as a frame of reference, I know 25 Commissioner Stearns is very familiar with ESA because</p>

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<p style="text-align: right;">Page 9</p> <p>1 they are the trade association for Nintendo and 2 Microsoft and other software video game companies, who 3 we have had lots of conversations with, good 4 conversations, they've been very, very good at being 5 available on the skins and loot box issues that we 6 dealt with last year. So they submitted a letter, I -- 7 I believe, in support of Big Fish's petition. 8 And then two more documents that came in that 9 I put at your place this morning. The first one is a 10 letter from an individual who wished to remain 11 anonymous on the record because of a fear of just being 12 outed on a record for, I think, her work or her family 13 or something like that, the embarrassment. And so 14 anyway, this was submitted through Mr. Tievsky. And so 15 he might be able to -- he might be able to answer any 16 questions related to the letter, but it's the double -- 17 it's the one-page double-sided that starts with, dear 18 commissioners. 19 VICE CHAIR PATTERSON: I was just puzzled 20 about the letter because it was anonymously provided, 21 but in the letter I read that this individual said that 22 they looked forward to telling us more about their 23 experience next week. How -- 24 MR. CONSIDINE: Yeah. 25 VICE CHAIR PATTERSON: How would that happen?</p>	<p style="text-align: right;">Page 11</p> <p>1 COMMISSIONER STEARNS: So basically when 2 you're -- you're talking about the RCW 34.05.240 where 3 it says that the agency may not enter a declaratory -- 4 it's -- it's under, I don't know, it was -- 5 MR. CONSIDINE: Uh-huh. 6 COMMISSIONER STEARNS: -- in section seven 7 where an agency may not enter a declaratory order that 8 would substantially prejudice the rights of a person 9 who would be a necessary party? 10 MR. CONSIDINE: Correct. 11 COMMISSIONER STEARNS: So I -- just -- just as 12 you go along, just keep in mind that I'd -- I'd also 13 like to more what -- about the first part where it says 14 prejudice of rights. 15 MR. CONSIDINE: Okay. 16 COMMISSIONER STEARNS: So if you could just 17 also explain to us what that means, that 18 (indiscernible). 19 MR. CONSIDINE: Right. And I think that's, 20 you know, it's a little bit unique position for me 21 because you know I love and try and explain things 22 based off of my thought, because staff is not really 23 kind of a party to this, I think that is a question 24 and -- and I think the attorneys probably heard that as 25 well, that that first part is something that they</p>
<p style="text-align: right;">Page 10</p> <p>1 MR. CONSIDINE: Yes. So Mr. Tievsky -- this 2 was submitted through Mr. Tievsky, so he probably has a 3 better ability to tell you about this individual. I 4 know she wanted to appear by -- actually appear in 5 person today. I believe she's a Washington resident, 6 and something came up, so she couldn't make her way to 7 Pasco. 8 VICE CHAIR PATTERSON: Thank you. 9 MR. CONSIDINE: The second letter that you 10 received has an NYU watermark at the top, multipage, 11 from Dr. Schull. Dr. Schull is the person that 12 Mr. Tievsky had mentioned at -- that wrote the book -- 13 VICE CHAIR PATTERSON: Uh-huh. 14 MR. CONSIDINE: -- that you had inquired to 15 get a reference from. So she submitted comments as 16 well. And as of -- I haven't checked this morning, but 17 as of yesterday, those are the all -- all the comments 18 that, I believe, we've received so far based off of 19 either your questions or knowing that there was still a 20 comment period on the petition. 21 And so moving forward, unless there's any 22 questions about the documents, I think we'll get into 23 the necessary party topic. Or -- 24 COMMISSIONER STEARNS: I -- 25 MR. CONSIDINE: Yes.</p>	<p style="text-align: right;">Page 12</p> <p>1 should be focused on when they're telling you what they 2 think it -- it should be. 3 So -- 4 VICE CHAIR PATTERSON: For the non-attorneys, 5 could you -- could you talk about what you're talking 6 about in a little bit different way? 7 MR. CONSIDINE: Sure. This is the same issue 8 as to whether or not the Commission -- whether or not 9 basically somebody has -- is a necessary party to the 10 action and consents to you making the decision. So 11 what you've heard previously is that Ms. Kater believes 12 she's a necessary party because she is a plaintiff in 13 lawsuits against Big Fish petitioner and that this will 14 negatively impact her case if you issue a declaratory 15 order as the petitioner has requested, which is to say 16 this -- what they do is not gambling, which would in 17 some ways though -- that was federal court, this is -- 18 we're clearly a state agency related to kind of state 19 court issues, but if you say it's not gambling, would 20 be argued -- or Mr. Tievsky can talk more about it, but 21 what he had said at the July meeting was that it would 22 undercut what the Ninth Circuit said. 23 And so they still -- kind of -- they still 24 have a case. This could potentially make their case go 25 away because the -- the intent would be for any party</p>

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<p style="text-align: right;">Page 13</p> <p>1 that this Commission is set to interpret the state law</p> <p>2 would say, the Gambling Commission says this is not</p> <p>3 gambling, so you can disregard that the Ninth Circuit</p> <p>4 said because we'll get into the facts and this is what</p> <p>5 you can apply. And that's a really generic summary.</p> <p>6 VICE CHAIR PATTERSON: That's -- I got it.</p> <p>7 Thank you.</p> <p>8 MR. CONSIDINE: Yeah.</p> <p>9 COMMISSIONER STEARNS: Yeah, and what I was</p> <p>10 going to add was --</p> <p>11 COMMISSIONER TROYER: I --</p> <p>12 COMMISSIONER STEARNS: -- there were three</p> <p>13 things there.</p> <p>14 MR. CONSIDINE: Right.</p> <p>15 COMMISSIONER STEARNS: -- prejudice of rights,</p> <p>16 necessary party, consent of right.</p> <p>17 MR. CONSIDINE: Right. Yeah, and -- and that</p> <p>18 was some of the conversation that I know Ms. Brinkmann</p> <p>19 and Mr. Tievsky had with you before is -- is, are they</p> <p>20 substantially prejudiced and what does that mean. And</p> <p>21 my expectation is that both Ms. Henn for Big Fish and</p> <p>22 Mr. Tievsky should be able to go into that a little</p> <p>23 bit.</p> <p>24 COMMISSIONER STEARNS: Thank you.</p> <p>25 COMMISSIONER TROYER: There are a lot of</p>	<p style="text-align: right;">Page 15</p> <p>1 what do they think?</p> <p>2 Is it an expansion of gambling or not an</p> <p>3 expansion of gambling. I mean, millions of dollars in</p> <p>4 numbers that I've been reading about, but yet, you</p> <p>5 know, we're -- we're (indiscernible) around with paper</p> <p>6 pull tabs and everything else. And -- and anybody</p> <p>7 brings up the word video monitor for a pull tab game,</p> <p>8 and they're -- the lobbyists and everybody go crazy;</p> <p>9 but just handing this over without really thinking it</p> <p>10 through and looking at it in an overall view to decide</p> <p>11 this case I think is dangerous.</p> <p>12 MR. CONSIDINE: Well, and, Commissioner</p> <p>13 Troyer, you're correct that Big Fish has brought before</p> <p>14 you just a petition related to their game. And we</p> <p>15 know, just based off of litigation, that there's four</p> <p>16 or five at least and probably more companies that would</p> <p>17 at least tangentially be affected by that.</p> <p>18 COMMISSIONER TROYER: Uh-huh.</p> <p>19 MR. CONSIDINE: So I think that that is</p> <p>20 something that is incredibly -- it's something that you</p> <p>21 can talk with AAG Kernutt when you're in closed</p> <p>22 session, but I think it's something that is appropriate</p> <p>23 to have that discussion as to whether or not you want</p> <p>24 to do this kind of a company-by-company basis or</p> <p>25 whether or not you want to take a larger kind of view</p>
<p style="text-align: right;">Page 14</p> <p>1 lawyers, and I only know them not to be dangerous. But</p> <p>2 as we're taking a look at this, instead of trying to</p> <p>3 regulate it to just this particular case and this</p> <p>4 particular incident with these people, I think we have</p> <p>5 a way bigger overall picture to take a look at, and</p> <p>6 there's a lot more to this than who wins or loses</p> <p>7 between these two people in court. I think the</p> <p>8 decision that we make and what we look at here could</p> <p>9 have long lasting effects on everybody for a long time</p> <p>10 to come.</p> <p>11 And I understand that you're -- you are kind</p> <p>12 of looking at this as a legal issue or a legal motion,</p> <p>13 but I think that we have the ability to do some type of</p> <p>14 investigation with people on our staff that know more</p> <p>15 than we know and -- and -- and understand it and take a</p> <p>16 bigger overall look at this whole entire problem and</p> <p>17 not make a decision based on their arguments.</p> <p>18 Because this is going to affect a lot of</p> <p>19 people, a lot of money, and it's a lot of -- a lot</p> <p>20 of -- a lot to contemplate. So I just don't want to</p> <p>21 keep it narrowed down to just -- just this. I want to</p> <p>22 take a bigger overall look at the picture, everything,</p> <p>23 the problem gambling, the -- the issues on the back end</p> <p>24 of all this, and what does the legislator -- what --</p> <p>25 what legislators think of this. The governor's office,</p>	<p style="text-align: right;">Page 16</p> <p>1 of this. And you can use that as how you determine how</p> <p>2 you want to move forward.</p> <p>3 VICE CHAIR PATTERSON: How we want to move</p> <p>4 forward versus how we would recommend the legislature</p> <p>5 move forward?</p> <p>6 MR. CONSIDINE: I would say how you want to</p> <p>7 move forward can be how you think we should advise the</p> <p>8 legislature to move forward. I mean, that's part of</p> <p>9 it. And I guess going back to the procedural, which I</p> <p>10 probably should have started with is, you know, you can</p> <p>11 say -- you can agree with the petition. You don't --</p> <p>12 it's not kind of like the rules petition where you say,</p> <p>13 yes, we'll agree to do what you -- you know, to engage</p> <p>14 in that specific rulemaking.</p> <p>15 This is left to you to say -- they want you</p> <p>16 to say it's not gambling. You could go the other way,</p> <p>17 and we talked about that in July, you could determine</p> <p>18 that it is gambling. You can also have that third</p> <p>19 option that says, we, for these good reasons, don't</p> <p>20 feel that we're going to issue -- we don't feel it's a</p> <p>21 good idea to issue a declaratory order.</p> <p>22 And then part of that is, just because you</p> <p>23 don't issue a declaratory order doesn't mean that you,</p> <p>24 as commissioners, can direct me or others to have these</p> <p>25 conversations with legislators, to reach out to our</p>

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<p style="text-align: right;">Page 17</p> <p>1 ex-officio and our committees, much like we did with</p> <p>2 skins and loot boxes last year and other topics that</p> <p>3 have come before us where we think there needs to be</p> <p>4 some education with the legislature and some</p> <p>5 exploration on the issue.</p> <p>6 VICE CHAIR PATTERSON: Mr. Chair.</p> <p>7 CHAIR SIZEMORE: Yes.</p> <p>8 VICE CHAIR PATTERSON: I think this is a great</p> <p>9 example of how our Commission could provide a great</p> <p>10 service to the legislature. This is an area where we</p> <p>11 could give advice on this topic. So I know that this</p> <p>12 is one of our goals and our strategic plan is to</p> <p>13 improve our relationship with the state legislature and</p> <p>14 to interact more meaningfully with them. So I just</p> <p>15 wanted to say that this potentially could be one of</p> <p>16 those topics.</p> <p>17 MR. CONSIDINE: It --</p> <p>18 CHAIR SIZEMORE: Well, no, I'm -- I'm -- was</p> <p>19 just going to say, I mean, we are being asked to --</p> <p>20 to --</p> <p>21 VICE CHAIR PATTERSON: Right.</p> <p>22 CHAIR SIZEMORE: -- you know, make a</p> <p>23 declaratory order. I think certainly the -- the</p> <p>24 discussions that we have and ultimately the decision</p> <p>25 that is made will -- will, you know, spur a lot of next</p>	<p style="text-align: right;">Page 19</p> <p>1 but I think it is good to kind of start off the way</p> <p>2 that we said because those are the topics that you</p> <p>3 asked for and this is a much broader conversation I</p> <p>4 think we can have at the end. And I think it's good to</p> <p>5 have that good open public dialogue on what you're kind</p> <p>6 of struggling with, what you're kind of figure out how</p> <p>7 the best way to do that; and it also allows the public</p> <p>8 to add additional comment onto that.</p> <p>9 But because from a really technical legal</p> <p>10 part is, if you all get enough information and with</p> <p>11 discussions amongst yourselves and you decide that you</p> <p>12 don't feel that you can legally move forward, because</p> <p>13 at least you know -- and I get the substantial</p> <p>14 prejudice part, Commissioner Stearns, but we know they</p> <p>15 haven't consented.</p> <p>16 Mr. Tievsky wanted to make -- and he'll say,</p> <p>17 it, I'm sure again, that they want to engage and they</p> <p>18 want to be as helpful as possible, but by no way are</p> <p>19 they waiving that argument, which is why we're having</p> <p>20 more conversation about it today, but that's the</p> <p>21 procedural hurdle. So if that -- if -- if you all feel</p> <p>22 that they are a necessary party who has a substantial</p> <p>23 right, then you can't move forward.</p> <p>24 And getting into all the other stuff, while</p> <p>25 maybe is important, isn't necessarily the petition --</p>
<p style="text-align: right;">Page 18</p> <p>1 steps, whether it is with the legislature or, you know,</p> <p>2 some other avenue. So you know, at this point, yeah, I</p> <p>3 mean, we are being asked to act and we have the, you</p> <p>4 know, the option to act the way they want us to, act</p> <p>5 the opposite way they want us to, or not act at all for</p> <p>6 good cause. So -- so those are our options.</p> <p>7 VICE CHAIR PATTERSON: If -- I -- I guess what</p> <p>8 I'm thinking is if -- I don't -- let's -- I'll wait and</p> <p>9 to --</p> <p>10 CHAIR SIZEMORE: Yeah.</p> <p>11 VICE CHAIR PATTERSON: -- see what we're going</p> <p>12 to do.</p> <p>13 MR. CONSIDINE: Yeah. What my</p> <p>14 recommendation --</p> <p>15 Sorry, go ahead, Senator.</p> <p>16 SENATOR CONWAY: No, I just want to -- I just</p> <p>17 have a question here since we're bringing in the</p> <p>18 legislature here. What would be helpful is to</p> <p>19 understand what other states have been doing around</p> <p>20 these issues as well. And I'm hoping that maybe you</p> <p>21 can provide that to me.</p> <p>22 MR. CONSIDINE: Right. I -- yeah, I'm happy</p> <p>23 to -- to find the time to do that offline. I -- what I</p> <p>24 was going to say is my recommendation is, I think this</p> <p>25 is a valuable discussion for you -- for you to have,</p>	<p style="text-align: right;">Page 20</p> <p>1 part of the petition. It's something that you can take</p> <p>2 up at -- on a different path.</p> <p>3 CHAIR SIZEMORE: Okay. Get us back on track.</p> <p>4 MR. CONSIDINE: Thank you.</p> <p>5 And -- and, Senator Conway, I -- I did hear</p> <p>6 you, and I'm happy to try and provide that information</p> <p>7 certainly.</p> <p>8 So I think we've teed it up pretty well. I</p> <p>9 don't know if you need to hear from me anymore on</p> <p>10 necessary party because Commissioner Stearns did a good</p> <p>11 job of breaking down kind of the -- the three parts.</p> <p>12 So I'll ask Ms. Henn come up. I'll stay here in case</p> <p>13 there's any --</p> <p>14 CHAIR SIZEMORE: Sure.</p> <p>15 MR. CONSIDINE: -- questions of me, but I'll</p> <p>16 let Ms. Henn come up and -- and give her part on, I'm</p> <p>17 guessing when they -- they're going to say that they're</p> <p>18 not a necessary party just like they did last time.</p> <p>19 CHAIR SIZEMORE: Okay. Welcome.</p> <p>20 MS. HENN: Thank you very much.</p> <p>21 CHAIR SIZEMORE: And if you could identify</p> <p>22 yourself for the record when you're ready.</p> <p>23 MS. HENN: My name is Emily Henn. I'm here on</p> <p>24 behalf of the petitioner, Big Fish Games.</p> <p>25 Thank you, Mr. Considine, and thank you all</p>

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<p style="text-align: right;">Page 21</p> <p>1 for allowing us to be here today and address you about 2 our petition for declaratory order. We're happy to 3 take these issues in the order that Mr. Considine has 4 described. And as he explained, last month my partner, 5 Ms. Brinkmann, touched on these issues; but our 6 understanding was that the Commission had asked some 7 questions. We did submit a letter on the necessary 8 party issue, which I'd be happy to address today and 9 answer any questions you may have. 10 The -- the -- this Commission has 11 regulations, and as Commissioner Stearns indicated, the 12 Revised Code of Washington also has a provision under 13 the Administrative Procedures Act that provides that an 14 agency may not enter a declaratory order that would 15 substantially prejudice the rights of a person who 16 would be a necessary party and who does not consent in 17 writing. 18 Whatever -- our position is that whatever 19 interest Ms. Kater may have in the legal arguments that 20 are at issue here about the definition of gambling, she 21 does not qualify as a necessary party within the 22 meaning of the regulations or the -- the code. And 23 that's because if the ruling that she is -- is urging 24 and the interpretation of necessary party that she is 25 urging would mean that anybody with an interest in the</p>	<p style="text-align: right;">Page 23</p> <p>1 and what the necessary party provision prevents is a 2 declaratory order proceeding, for example, in a matter 3 where a contract is being interpreted. 4 And -- and we cited a case where there was a 5 Collective Bargaining Agreement. One party asked an 6 agency to interpret it, and the holding was that the 7 other party, the employer to that contract, was a 8 necessary party. That's because any determination 9 about that contract, that Collective Bargaining 10 Agreement, would affect the rights of that other party. 11 But here, we're not asking the Commission to 12 enter an order denying relief to Ms. Kater on her 13 claims. Again, those claims will be resolved by the 14 federal court or the arbitrator. And the necessary 15 party provision doesn't prevent agency action from 16 occurring merely because a third party is interested in 17 the meaning of state law. 18 That's such a broad standard that it would 19 really mean that any time someone had an interest in 20 the meaning of the state law that this Commission 21 interprets and enforces, they could stop the Commission 22 from entering a declaratory order merely by filing suit 23 in court; and that's -- that's not the rule. You can't 24 sort of artificially create this situation and -- and 25 assert that your rights are at issue when really what</p>
<p style="text-align: right;">Page 22</p> <p>1 meaning of state law could prevent this Commission from 2 carrying out its responsibility that the legislator -- 3 the legislature has given it to interpret and enforce 4 the Washington Gambling Act. 5 She of course has an interest in her claims 6 that she is pursuing in federal court, and those claims 7 will be resolved by that court or an arbitrator; but 8 the meaning of state law, she doesn't take the position 9 that that's -- that's a matter that the federal court 10 should decide, because that's -- that's not how our 11 federal system works. It's for the legislature of this 12 state and this Commission to interpret the laws that 13 are currently in effect. 14 And of course state courts can review those 15 determinations and -- and will to make a final 16 determination of what state law means. That's not the 17 job of a federal court, which can of course make a 18 judgment about what state law means, but really the -- 19 that job is -- is for the state legislature and -- and 20 which has delegated authority to this Commission. 21 The necessary party provision, what -- what 22 that does is protect a third party from having an 23 agency directly adjudicate its rights. And that's why 24 that -- the -- the language in the -- in the provision 25 is very important. It -- it refers to rights. And --</p>	<p style="text-align: right;">Page 24</p> <p>1 your -- your interest in the matter is merely an 2 interpretation of what the law means. 3 And of course Ms. Kater and her -- Ms. Kater 4 is a Michigan resident represented by a Chicago lawyer, 5 who, in that lawsuit, is seeking to represent a 6 nationwide class. So under -- under the ruling or the 7 necessary party interpretation that Ms. Kater is 8 urging, any of those people could potentially come here 9 and say, no, I understand this is the State Commission 10 that's charged by the legislature with interpreting and 11 enforcing law, but I don't consent to you doing that; 12 and that's just too broad of a reading of that statute. 13 The submission by Ms. Kater talks a lot about 14 the necessary party standard that applies in civil 15 cases, and that's just a very different standard. 16 That's a -- that's a determination that courts make 17 about whether a party can come into a case, and it's a 18 much lower standard. It's also -- just has different 19 words. And that's why I'm pleased that -- that the 20 Commission is focusing on the words in the regulation 21 and in the code that -- that apply here, that -- 22 that -- that rights of a -- of an individual, a third 23 party, must be substantially prejudiced. 24 We don't think Ms. Kater has rights at issue 25 here more than simply an interest in how this</p>

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<p style="text-align: right;">Page 25</p> <p>1 Commission interprets state law. And we don't believe</p> <p>2 that Ms. Kater's interest would be substantially</p> <p>3 prejudiced, regardless of how the declaratory order</p> <p>4 petition is resolved. She has her case, and the proper</p> <p>5 place to resolve that case is in -- in federal court or</p> <p>6 with an arbitrator, and that's -- that's yet to be</p> <p>7 decided.</p> <p>8 We also have argued in our letter, and -- and</p> <p>9 the arguments are there, so I won't spend a lot of time</p> <p>10 on them here, that we don't think Ms. Kater would even</p> <p>11 qualify as a necessary party under the civil court</p> <p>12 standard because really what she's asserting is an</p> <p>13 interest in a monetary recovery. And -- and courts, as</p> <p>14 we've mentioned in the letter, have held that that's</p> <p>15 not enough.</p> <p>16 But -- but we don't think that's the key</p> <p>17 issue. The key issue here is to apply the regulation</p> <p>18 and the code provision that only someone with rights</p> <p>19 that would be substantially affected by the declaratory</p> <p>20 order is -- is a necessary party under that provision</p> <p>21 that must consent to this Commission acting on the</p> <p>22 petition.</p> <p>23 So I'd be happy to answer any questions or</p> <p>24 yield to others.</p> <p>25 COMMISSIONER STEARNS: A couple questions.</p>	<p style="text-align: right;">Page 27</p> <p>1 particular way. So there, the other agency, since its</p> <p>2 regulation and the interpretation of its regulation was</p> <p>3 at issue, that agency was determined to be a necessary</p> <p>4 party, without which the order couldn't proceed.</p> <p>5 So it has to be a specific right. And the</p> <p>6 petition -- and -- and you know, here our petition</p> <p>7 seeks a ruling as to -- a ruling that -- that Big Fish</p> <p>8 Games, Big Fish Casino games are not gambling. That</p> <p>9 determination would have to determine a right of</p> <p>10 Ms. Kater. And while she clearly has an interest in</p> <p>11 how you interpret state law, because she has a separate</p> <p>12 case about that, our position is that that's just not</p> <p>13 enough.</p> <p>14 And if it were enough, that it would just be</p> <p>15 way too broad of standard that would really mean that</p> <p>16 the agency charged with interpreting and enforcing the</p> <p>17 Washington Gambling Act couldn't ever act. It would be</p> <p>18 very easy for a party to say, well, I have a lawsuit</p> <p>19 over here, so you can't act. That's our position.</p> <p>20 COMMISSIONER STEARNS: So -- so -- so like a</p> <p>21 contractual right or a property right? Is that --</p> <p>22 MS. HENN: Correct.</p> <p>23 COMMISSIONER STEARNS: -- what you're going --</p> <p>24 okay.</p> <p>25 MS. HENN: Exactly.</p>
<p style="text-align: right;">Page 26</p> <p>1 CHAIR SIZEMORE: Okay.</p> <p>2 COMMISSIONER STEARNS: So maybe -- maybe could</p> <p>3 you just sort of flip it around just -- just -- just</p> <p>4 for -- for my sake? So could you explain what --</p> <p>5 for -- there are two things, what would make her a</p> <p>6 necessary party and what would be a right.</p> <p>7 MS. HENN: Absolutely. So what I think the</p> <p>8 best way to explain what -- what would be a right and</p> <p>9 what would make her a necessary party is to look at</p> <p>10 other cases decided by agencies or state courts</p> <p>11 interpreting that very language. And I gave one</p> <p>12 example, which is, if your -- if your specific right is</p> <p>13 being adjudicated through the declaratory order, for</p> <p>14 example, that employer's rights in the Collective</p> <p>15 Bargaining Agreement. The agency there decided, we</p> <p>16 can't decide this issue because it would -- it would --</p> <p>17 it would determine rights of an employer, who is not</p> <p>18 here and who doesn't consent. So that's one example.</p> <p>19 Another example is the Department of Ecology</p> <p>20 case, I think it was the Boeing Company versus the</p> <p>21 Department of Ecology. There the agency held that</p> <p>22 another agency, which had promulgated a rule, was a</p> <p>23 necessary party when Boeing came to a separate agency</p> <p>24 and said, please rule that that other agency's rule</p> <p>25 doesn't apply to us or should be interpreted in a</p>	<p style="text-align: right;">Page 28</p> <p>1 CHAIR SIZEMORE: Okay. Any other questions?</p> <p>2 All right, Thank you.</p> <p>3 MS. HENN: Thank you very much.</p> <p>4 CHAIR SIZEMORE: (Indiscernible).</p> <p>5 Good morning.</p> <p>6 MR. TIEVSKY: Good morning. I'm Alexander</p> <p>7 Tievsky. I represent Cheryl Kater in the lawsuit</p> <p>8 against Churchill Downs involving Big Fish Games. I</p> <p>9 thank the Commission for having me back. It's great to</p> <p>10 be here.</p> <p>11 So what I'd like to do is go through very</p> <p>12 briefly sort of our -- our affirmative case on</p> <p>13 necessary party, and then I -- I can address some of</p> <p>14 the arguments you've heard. So as -- as you've heard a</p> <p>15 couple times, if you -- if -- in a declaratory order</p> <p>16 proceeding, if the Commission is going to adjudicate --</p> <p>17 if -- if the Commission's order is going to</p> <p>18 substantially prejudice a necessary party, they require</p> <p>19 written consent.</p> <p>20 I know that I am here, but Ms. Kater has not</p> <p>21 provided the written consent. So that -- that sort of</p> <p>22 element is established, and the question is about the</p> <p>23 other two.</p> <p>24 So as far as necessary party is concerned,</p> <p>25 the term necessary party is well established in law.</p>

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<p style="text-align: right;">Page 29</p> <p>1 And there's no cases and no authority to suggest that 2 it means anything different in the context that it's 3 used in your rules and the statute that regulates this 4 Commission than in any other case. The Washington 5 Supreme Courts answer this question a couple -- 6 numerous times. It's a pretty low standard. 7 It's a question of, could someone's rights, 8 legal rights be affected. So they're right, if you're 9 just, you know, if you have a thought about how the law 10 works and you come and you say, I have a thought about 11 this and, you know, it's -- you know, I disagree and I 12 don't consent, that's not enough. You've got to have 13 something more than that. 14 And in this case, Ms. Kater has a lawsuit. 15 She has got a cause of action that she is given by a 16 Washington statute. And I haven't heard any 17 explanation about how that's any different from a legal 18 right you get from a contract. In this case her right 19 doesn't come from a contract, it comes from a law of 20 this state that says she's got a certain right to 21 recover money that she lost at illegal gambling. 22 If you enter the order that they ask for, 23 that makes it more difficult for her to exercise that 24 right. And that's all you need here. The Washington 25 Supreme Court has made pretty clear that it is the</p>	<p style="text-align: right;">Page 31</p> <p>1 she has spent years litigating this case. She lost in 2 the district court. She had to appeal it. It takes a 3 long time. It takes a lot of resources. 4 And courts have recognized that when -- when 5 a defendant litigates something in one court, one forum 6 and doesn't like the answer they get and goes somewhere 7 else, that's -- that's prejudicial. That hurts the 8 person who won because it negates their victory. 9 I'd like to address a comment that was made a 10 couple times in the previous testimony that somehow 11 Ms. Kater or somebody else could come in here and 12 prevent the Commission from acting on this matter. 13 That is not true. It is simply a procedural question. 14 It is, can you do it this way. 15 And so the declaratory order proceeding, 16 you're deciding based on what Big Fish has submitted, 17 right, their petition, not based on the investigation 18 of your staff. There's not public notice and comment. 19 The Commission has procedures, formal rulemaking under 20 the Administrative Procedures Act, an interpretive 21 statement, lots of ways you can interpret the law that 22 Ms. Kater has no say in whether or not you do it; but 23 the declaratory order is a special type of proceeding, 24 and it's a little bit streamlined, it doesn't 25 require -- it doesn't have the same procedural</p>
<p style="text-align: right;">Page 30</p> <p>1 claim that it will affect you that -- that is required. 2 It's not -- the Commission doesn't have to decide for 3 sure that it's going to affect them or that the law 4 means a certain thing in order to determine that 5 someone is a necessary party. 6 As far as the second part, substantial 7 prejudice, I think that's -- that's clearly met here. 8 The -- the reason they're here and asking you for this 9 is because they would like to go back to the court and 10 say, look, look, the Gambling Commission said this 11 wasn't gambling, and therefore, you should listen to 12 them. The Ninth Circuit got it wrong, they 13 misunderstood the law. We know now the law is clear, 14 the Gambling Commission has said here fine; and so 15 Ms. Kater needs to lose. 16 I -- I guarantee you that's what they do 17 because they've already tried with the pamphlet that 18 your -- that your staff put together years ago. 19 They -- they told the court, the Gambling Commission 20 has already decided this. You have to listen to them. 21 If it is done in a formal way, as 22 Ms. Brinkmann talked about last time, that will be a 23 much stronger position for them, and that will -- it is 24 not a sure thing, but it will likely cause Ms. Kater to 25 lose, and that would be substantial prejudice because</p>	<p style="text-align: right;">Page 32</p> <p>1 protections. You don't have to publish, you know, your 2 proposed rules. All of those -- all of those 3 protections aren't there. 4 And I -- you know, look, no court has 5 interpreted it and says this, but it appears to me as 6 though that's why this consent requirement is here, 7 that's to make sure that if you're going to do this, 8 it's done in a fair and open way like Commissioner 9 Troyer was suggesting earlier. 10 So you know, we -- Ms. Kater would not come 11 here if you were doing rulemaking or an interpretive 12 statement and say, no, you can't do this. It -- it is 13 the way that it's being done is that it causes the 14 problem. Any questions I can answer for the 15 Commission? 16 CHAIR SIZEMORE: Any questions there? 17 So my -- my question might be to Brian just 18 to affirm what I just heard there. So what -- what 19 he's saying is that a declaratory order, then the 20 necessary party -- party aspect does apply; but if we, 21 as a Commission, had saw the Ninth Circuit decision and 22 said, oh, we want to do a rule that clarifies that it 23 is gambling or clarifies that it isn't gambling, if we 24 initiated that, then neither Big Fish or Ms. Kater or 25 any other individual would be -- have this necessary</p>

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<p style="text-align: right;">Page 33</p> <p>1 party or that -- that -- that way of not consenting?</p> <p>2 MR. CONSIDINE: That is correct. Without</p> <p>3 going through the entire Administrative Procedures Act</p> <p>4 to see if there's another, but the way that it's been</p> <p>5 positioned, yes. I've spent a lot of time in the APA,</p> <p>6 and clearly AAG Kernutt can correct me if -- if he</p> <p>7 thinks I am going to misspeak, and I encourage him to</p> <p>8 do so if I do; but yes, necessary party is very unique</p> <p>9 to this specific action. It's not in rulemaking.</p> <p>10 They can come and give comment, and you've</p> <p>11 gone through a rulemaking, but they -- they couldn't</p> <p>12 come in and say, this is going to really harm us and</p> <p>13 you can't do the rulemaking or you can't do an</p> <p>14 interpretive statement or you can't do some other</p> <p>15 action that you're, you know, you're able to do.</p> <p>16 CHAIR SIZEMORE: Okay.</p> <p>17 AAG KERNUTT: You -- you accurately summarized</p> <p>18 the issue, so I have no corrections.</p> <p>19 COMMISSIONER STEARNS: (Indiscernible) and --</p> <p>20 and in terms of the -- I -- I don't think we've covered</p> <p>21 what -- what's happened in other states, and I -- one</p> <p>22 of the letters referenced actions in Maryland,</p> <p>23 California, Illinois, and Michigan. Can you fill us in</p> <p>24 on that?</p> <p>25 MR. TIEVSKY: Yeah. I -- so I -- I litigated</p>	<p style="text-align: right;">Page 35</p> <p>1 these games aren't winners because they don't put</p> <p>2 anything at risk. I don't know how true that is,</p> <p>3 but -- but in Washington the law allows you to recover</p> <p>4 from a winner or a proprietor. Those are, you know,</p> <p>5 proprietor is a much broader -- broader comment, so it</p> <p>6 doesn't -- it doesn't really apply. So you know,</p> <p>7 these -- these -- these gambling laws are real old, and</p> <p>8 states develop them in -- in different ways.</p> <p>9 And I would say that Washington regulates</p> <p>10 gambling more tightly than a lot of states do. You</p> <p>11 know, the work -- the work that you do here and the --</p> <p>12 the -- the, you know, degree of oversight that this --</p> <p>13 that this Commission has is -- is -- is far more than</p> <p>14 you see certainly in places like Nevada, but even in</p> <p>15 places like -- like Illinois or Maryland. And so -- so</p> <p>16 that's why you see different results in different</p> <p>17 states.</p> <p>18 Hawaii is a really interesting example.</p> <p>19 Hawaii's law is almost exactly the same as</p> <p>20 Washington's, except that it lacks the thing of value</p> <p>21 definition, at the very end lacks the -- the phrase,</p> <p>22 you know, play at a game without charge. And there is</p> <p>23 actually a lot of discussion in Hawaii House of</p> <p>24 Representatives about that issue and about potentially</p> <p>25 changing that. I hope that helps.</p>
<p style="text-align: right;">Page 34</p> <p>1 the Maryland case --</p> <p>2 COMMISSIONER STEARNS: Okay.</p> <p>3 MR. TIEVSKY: -- and one of the Illinois</p> <p>4 cases, so like I can speak to that a little bit. Those</p> <p>5 states have very different laws than Washington does.</p> <p>6 So --</p> <p>7 COMMISSIONER STEARNS: Was -- was it on behalf</p> <p>8 of the same client?</p> <p>9 MR. TIEVSKY: No. They're -- they're</p> <p>10 different, different clients, different games, many of</p> <p>11 them, that work in different ways; but most importantly</p> <p>12 the statutes are really different. So Washington</p> <p>13 statute says that people can recover if they lose money</p> <p>14 or thing of value. In Maryland, you have to lose</p> <p>15 money, period. There's not a thing of value there.</p> <p>16 And so the courts said, well, you didn't lose money.</p> <p>17 You maybe lost this thing of value, but that doesn't</p> <p>18 matter.</p> <p>19 But in Washington that's not the law. And --</p> <p>20 and the Ninth Circuit -- the Ninth Circuit made this</p> <p>21 same comment, those are -- those are very different</p> <p>22 laws.</p> <p>23 In Illinois, there's a requirement that you</p> <p>24 can only sue the winner of a gambling game. And the</p> <p>25 courts have said, well, these people aren't running --</p>	<p style="text-align: right;">Page 36</p> <p>1 COMMISSIONER STEARNS: Yeah, thank you.</p> <p>2 MR. CONSIDINE: I -- I just note, we have</p> <p>3 not -- I have not -- I don't believe staff has spent a</p> <p>4 lot of time look -- yet looking at those cases, just</p> <p>5 based on the posture of this. I would guess that these</p> <p>6 other cases are all civil cases between</p> <p>7 non-governmental entities, right? So it's</p> <p>8 manufacturers, proprietors, and -- and customers or</p> <p>9 citizens.</p> <p>10 So those cases are all going to be very</p> <p>11 different, the way in which they're set up is going to</p> <p>12 be different, because, much like Mr. Tievsky just</p> <p>13 talked about, they're coming under -- well, they're not</p> <p>14 consumer protection laws; they were laws that were put</p> <p>15 into place to try and provide a remedy for someone who</p> <p>16 felt that they were being taken advantage of by someone</p> <p>17 doing an illegal activity. Whereas this clearly is</p> <p>18 going before the regulatory body of the Gambling Act</p> <p>19 and asking for you all to interpret something related</p> <p>20 to their games.</p> <p>21 And it can be taking other places, the facts</p> <p>22 may be the same; but the procedural posture, how it</p> <p>23 gets before you, how you look at it, and what happens</p> <p>24 from here is going to be a little bit different than</p> <p>25 those states. So while those cases very well could be</p>

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<p style="text-align: right;">Page 37</p> <p>1 informative and I'm sure happy, whether it's staff or 2 asking the parties to kind of provide some summary of 3 that or counsel, we can do that; but I don't -- I -- 4 I'm sure it's helpful, but I don't know if it's going 5 to provide a great answer. 6 CHAIR SIZEMORE: Okay, perfect. 7 COMMISSIONER STEARNS: Oh. 8 CHAIR SIZEMORE: So -- 9 MR. CONSIDINE: Sorry. 10 COMMISSIONER STEARNS: I didn't have one. 11 CHAIR SIZEMORE: You're good, okay. 12 MR. CONSIDINE: I was just going to say, 13 because we talked about these other states, I was going 14 to recommend that we invite, at least, Ms. Henn, on 15 behalf of Big Fish, if she wants some comments 16 specifically on what have other states done with this 17 since we've given Mr. Tievsky the ability to talk about 18 that. Short, brief, just gives them both -- you hear 19 from -- 20 CHAIR SIZEMORE: Sure. 21 MR. CONSIDINE: -- both. Yeah, okay. 22 CHAIR SIZEMORE: Absolutely. 23 MR. CONSIDINE: And then she can stay up for 24 the next part. 25 CHAIR SIZEMORE: Okay. And I'm going to</p>	<p style="text-align: right;">Page 39</p> <p>1 Mr. Tievsky's firm representing different clients, but 2 really out suing -- bringing cases that are an attempt 3 to expand the definition of gambling under all these 4 different state laws. 5 And as you heard, he's very familiar with 6 them because he's been through that process. And as 7 far as I'm aware, all of the states rejected these 8 attempts to expand gambling to encompass the types of 9 games that we are here today to talk to you about, Big 10 Fish Casino, where there's no possibility of getting 11 money back. You know, once you buy a virtual item, 12 your money is spent regardless of the outcome of any 13 games that you play. 14 But I think that discussion is probably 15 better held for the thing of value discussion. It -- 16 but it is -- I think that ESA letter is very helpful to 17 walk you through just exactly what those courts held 18 and why they determined under those laws that these 19 types of games are not gambling. 20 CHAIR SIZEMORE: Okay, all right. 21 Any clarification? Okay. Just to close this 22 out, I did want to offer -- or ask if there are any 23 other parties in the public or in -- in the audience 24 that wish to add something to the record regarding 25 necessary party. So is there anyone? Not seeing</p>
<p style="text-align: right;">Page 38</p> <p>1 actually give us about a five-minute recess. 2 MR. CONSIDINE: Fair enough, but -- 3 CHAIR SIZEMORE: But -- 4 MR. CONSIDINE: But for the record purposes, 5 if we can kind -- 6 COMMISSIONER STEARNS: Yep. 7 MR. CONSIDINE: -- finish the state part -- 8 CHAIR SIZEMORE: Yes. 9 MR. CONSIDINE: -- and then break. 10 COMMISSIONER STEARNS: Yeah, yeah. 11 MR. CONSIDINE: Okay, awesome. Thank you. 12 MS. HENN: I'll make this brief, and I 13 appreciate the opportunity to comment. I think these 14 other state cases probably get into the next issue 15 we're going to talk about, thing of value and -- and 16 how other states have interpreted gambling. I will 17 recommend to you the ESA letter, which ESA is kind of 18 uniquely positioned, having members as they do, who 19 operate all over the country, and they have followed 20 these cases very closely. 21 While these other states were interpreting 22 different laws, and of course they're -- that's -- 23 that's critical when you're interpreting a statute to 24 pay attention to the language, I think it's -- it's 25 worthwhile to note that many of those cases, it was</p>	<p style="text-align: right;">Page 40</p> <p>1 anyone. 2 If we can, I'd like to do just like a 3 five-minute recess, and then we'll come back and take 4 it up right where we are. 5 MS. HENN: Thank you very much. 6 CHAIR SIZEMORE: Okay, thanks. 7 (Off the record) 8 (On the record) 9 CHAIR SIZEMORE: All right. I will call us 10 back from recess, and we will return to the petition 11 for declaratory order as proposed by Big Fish Games. 12 And, Brian, I'll put you back in command. 13 MR. CONSIDINE: Thank you, Mr. Chair. 14 The next topic will be related to thing of 15 value, which is really the -- the substantive part 16 of -- of this. To try and help frame it, clearly our 17 gambling laws, we're very good at summarizing it 18 shortly as you have to have prize consideration and a 19 game of chance. I think to simplify it as this, based 20 off of what a -- is in the record and -- and there is 21 not a lot other than conversations with questions as to 22 what are the games that are being played, I think 23 everyone can agree they're casino-style games, so I 24 think they're at least games of chance under our -- 25 just under Washington State law.</p>

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<p style="text-align: right;">Page 41</p> <p>1 And so that thing of value, which is -- has</p> <p>2 its own definition -- so this gets into the -- the</p> <p>3 legal weeds, but unfortunately that's a little</p> <p>4 unavoidable here, that thing of value a chance --</p> <p>5 always attaches to that consideration, which is what do</p> <p>6 you pay, what do you give for a gambling activity when</p> <p>7 we're talking about gambling and then the prize, what</p> <p>8 do you receive, it all centers around thing of value,</p> <p>9 which is where the Ninth Circuit opined on and really</p> <p>10 where really the crux of what you'll hear from</p> <p>11 Ms. Henn, Mr. Tievsky, and anybody else will be related</p> <p>12 to, is there a thing of value that they're either</p> <p>13 giving or that they're receiving as a prize and under</p> <p>14 our definition whether it -- it -- it meets that.</p> <p>15 So that's why thing of value, one, why I'm --</p> <p>16 I believe you came back and you wanted to know that</p> <p>17 because that's what it centers around. And -- and</p> <p>18 that's really what the Ninth Circuit -- that's what the</p> <p>19 civil case centers around, that's what the petition</p> <p>20 centers around. And I will let Ms. Henn summarize kind</p> <p>21 of how they feel it fits or doesn't fit within their</p> <p>22 operational model, but I just wanted to -- to talk</p> <p>23 about -- set that up real quick.</p> <p>24 CHAIR SIZEMORE: Okay. Any questions for</p> <p>25 Brian before Ms. Henn?</p>	<p style="text-align: right;">Page 43</p> <p>1 based off the information that you're -- you're</p> <p>2 receiving. And it may just be best if I read the</p> <p>3 statute into the record, that way maybe that -- that's</p> <p>4 a little helpful.</p> <p>5 Thing of value, as used in this chapter,</p> <p>6 which is the Gambling Act, means any money or property;</p> <p>7 any token, object, or article exchangeable for money or</p> <p>8 property; or any form of credit or promise directly or</p> <p>9 indirectly contemplating transfer of money or property</p> <p>10 or of any interest therein or involving extension of a</p> <p>11 service, entertainment, or a privilege of playing at a</p> <p>12 game or scheme without charge.</p> <p>13 And it was -- I -- I think, without --</p> <p>14 without remembering directly and looking at the</p> <p>15 citation, that while it says 1987, I think that's the</p> <p>16 original definition from 1974 or 1973. I think they --</p> <p>17 they reorganized the -- they reorganized the statute in</p> <p>18 '87, so I don't believe it really has changed since it</p> <p>19 was first created. And written the only way the</p> <p>20 legislature could do in the '80s, in a long paragraph</p> <p>21 like that.</p> <p>22 You know, I know it can be a little bit hard</p> <p>23 to follow, and that's why we -- we have Ms. Henn and</p> <p>24 Mr. Tievsky to kind of let you know kind of their</p> <p>25 thoughts on that; but this is the definition. The</p>
<p style="text-align: right;">Page 42</p> <p>1 COMMISSIONER TROYER: I have some questions.</p> <p>2 CHAIR SIZEMORE: Yes.</p> <p>3 COMMISSIONER TROYER: Is thing of -- there we</p> <p>4 are, get away from it. Is thing of value -- is thing</p> <p>5 of value defined in law or defined through court</p> <p>6 decisions?</p> <p>7 MR. CONSIDINE: Thing of value is defined in</p> <p>8 our Gambling Act.</p> <p>9 COMMISSIONER TROYER: Okay. But is the court</p> <p>10 interpretation of that thing of value, what --</p> <p>11 what's -- is this part of the discussion here?</p> <p>12 Sometimes I know law -- law --</p> <p>13 MR. CONSIDINE: Right.</p> <p>14 COMMISSIONER TROYER: You have a law in the</p> <p>15 books and then you have administrative decisions that</p> <p>16 are made around that law. And I guess to me I'd like</p> <p>17 to know a little bit more of that history, because it's</p> <p>18 not the first time this Commission has had the thing of</p> <p>19 value before. And so I guess that would be a request</p> <p>20 for information on it.</p> <p>21 MR. CONSIDINE: Certainly. And -- and I think</p> <p>22 this may be helpful is the Ninth Circuit issued a</p> <p>23 decision interpreting our statute related to the civil</p> <p>24 claims that Ms. Kater was bringing. You are</p> <p>25 determining it based off of your regulatory authority,</p>	<p style="text-align: right;">Page 44</p> <p>1 definition I just read is -- is what we're talking</p> <p>2 about when it relates to if what you're paying is a</p> <p>3 thing of value.</p> <p>4 And I think more on this end, based on</p> <p>5 conversations that I've heard several representatives</p> <p>6 from these companies talk about, it's that part, you</p> <p>7 know, there's no prize. Their argument is, and she can</p> <p>8 talk about it, there's no prize.</p> <p>9 And so even if there is consideration, there</p> <p>10 may or may not be, because you can play these games for</p> <p>11 free, but you can also spend money to upgrade the</p> <p>12 product, there is no prize. And that's what -- that's</p> <p>13 been the argument that we've heard, and that where</p> <p>14 thing of value comes in. And it -- and it has come in</p> <p>15 on other conversations this we've had over the last</p> <p>16 year related to other types of activities and whether</p> <p>17 or not a virtual object, the way in which it's being</p> <p>18 used, is there a marketplace, those sorts of things, is</p> <p>19 there a thing of value.</p> <p>20 And you've been struggling. You know, we've</p> <p>21 been really discussing this and getting into it in</p> <p>22 great depth for the last year or so.</p> <p>23 CHAIR SIZEMORE: Mrs. Patterson.</p> <p>24 VICE CHAIR PATTERSON: There is no prize, but</p> <p>25 the definition also includes the words or in involving</p>

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<p style="text-align: right;">Page 45</p> <p>1 extension of entertainment?</p> <p>2 MR. CONSIDINE: Right.</p> <p>3 VICE CHAIR PATTERSON: So it's more than</p> <p>4 just -- the -- the definition includes more than a</p> <p>5 prize.</p> <p>6 MR. CONSIDINE: Right. And -- and it's more</p> <p>7 than just getting money back.</p> <p>8 VICE CHAIR PATTERSON: Right. And the</p> <p>9 definition --</p> <p>10 MR. CONSIDINE: I mean, we've talked --</p> <p>11 VICE CHAIR PATTERSON: -- includes the</p> <p>12 extension of service, entertainment, or the privilege</p> <p>13 of playing the game --</p> <p>14 MR. CONSIDINE: Right.</p> <p>15 VICE CHAIR PATTERSON: -- without charge.</p> <p>16 MR. CONSIDINE: Right. And -- and that's</p> <p>17 where the Ninth Circuit seized -- of what I remember,</p> <p>18 the Ninth Circuit seized on that a little bit, too,</p> <p>19 that there was an extension of play, and therefore the</p> <p>20 games were gambling. And --</p> <p>21 VICE CHAIR PATTERSON: Okay.</p> <p>22 MR. CONSIDINE: And that's where the Ninth</p> <p>23 Circuit came.</p> <p>24 VICE CHAIR PATTERSON: All right.</p> <p>25 MR. CONSIDINE: And -- and I'm sure the</p>	<p style="text-align: right;">Page 47</p> <p>1 and -- and whether this game is gambling. Our position</p> <p>2 is that Big Fish Casino games virtual tokens are not</p> <p>3 things of value because they can't be sold, they can't</p> <p>4 be redeemed, and they can't be cashed out for money or</p> <p>5 for a prize. And furthermore, they're prohibited --</p> <p>6 prohibited by the game's terms of use from being</p> <p>7 transferred for commercial game -- gain, excuse me, and</p> <p>8 have no real world value.</p> <p>9 VICE CHAIR PATTERSON: Well, can I ask a</p> <p>10 question?</p> <p>11 MS. HENN: Please.</p> <p>12 CHAIR SIZEMORE: Yes, you may.</p> <p>13 VICE CHAIR PATTERSON: So you just gave me</p> <p>14 your opinion of what a thing of value is, but we have</p> <p>15 the words in black and white right here and what it is</p> <p>16 that the State of Washington defines as a thing of</p> <p>17 value.</p> <p>18 MS. HENN: Absolutely. And --</p> <p>19 VICE CHAIR PATTERSON: So you're -- you're</p> <p>20 expressing your opinion that it is not a thing of value</p> <p>21 because of your definition of thing of value. What</p> <p>22 about as it relates to the State of Washington's</p> <p>23 definition?</p> <p>24 MS. HENN: Yes. And that's -- and our</p> <p>25 argument is very much tied to the statute, so I'd be</p>
<p style="text-align: right;">Page 46</p> <p>1 attorneys will correct me if I've miss -- if I've</p> <p>2 misremembered the case.</p> <p>3 COMMISSIONER STEARNS: Right. And -- and I</p> <p>4 mean, but what you just read, I think, what it also</p> <p>5 comes down to, the last part is without charge.</p> <p>6 MR. CONSIDINE: Uh-huh.</p> <p>7 COMMISSIONER STEARNS: And that -- that seems</p> <p>8 to be key, if there's an actual charge.</p> <p>9 MR. CONSIDINE: Right. And I think that's a</p> <p>10 very good question and a good segue to give it over to</p> <p>11 Ms. Henn and kind of talk about that from Big Fish's</p> <p>12 perspective.</p> <p>13 MS. HENN: Thank you very much and thank you</p> <p>14 again. May it please the Commission, I'd be happy to</p> <p>15 address thing of value, because I do think that's kind</p> <p>16 of where we're -- we're all focused. You know, just a</p> <p>17 note, I think you're all familiar, the petition that we</p> <p>18 filed is seeking a declaratory order on a -- on a</p> <p>19 narrow issue, and it's essentially under existing law,</p> <p>20 which we'll get into on thing of value, whether Big</p> <p>21 Fish Casino games constitute gambling.</p> <p>22 So some of the procedures that Mr. Tievsky</p> <p>23 was talking about, making new rules, or potentially the</p> <p>24 legislature making new law, you know, that may happen;</p> <p>25 but what we're here today to talk about is existing law</p>	<p style="text-align: right;">Page 48</p> <p>1 happy to jump right in there.</p> <p>2 VICE CHAIR PATTERSON: I apologize if I jumped</p> <p>3 the gun.</p> <p>4 MS. HENN: Not at all. I want to make sure I</p> <p>5 address the questions that are important to you. So</p> <p>6 under RCW 94.06.237, that -- that statute defines</p> <p>7 gambling as requiring the opportunity to win something</p> <p>8 of value. RCW 94.06.285 does -- defines thing of</p> <p>9 value, and that's the statute you were looking at.</p> <p>10 And -- and it -- it --</p> <p>11 VICE CHAIR PATTERSON: Right.</p> <p>12 MS. HENN: It can be broken down into four</p> <p>13 possible things that could be a thing of value, money</p> <p>14 or property, a token or object or article exchangeable</p> <p>15 for money or property, a form of credit that</p> <p>16 contemplates transfer of money or property, and then</p> <p>17 the fourth one, which is where your question,</p> <p>18 Commissioner Patterson, is focused and where the Ninth</p> <p>19 Circuit was focused is any form of credit or promise,</p> <p>20 directly or indirectly -- and I'm skipping a few words</p> <p>21 to get to the relevant part -- involving extension of a</p> <p>22 service, entertainment, or a privilege of playing at a</p> <p>23 game or scheme without charge.</p> <p>24 And we believe that under many established</p> <p>25 principles of how statutes are interpreted that our --</p>

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<p style="text-align: right;">Page 49</p> <p>1 I don't think there's any dispute that our games, 2 tokens don't fall in those first three categories. The 3 dispute is whether it falls under the fourth. And we 4 think you have to read that fourth and the language 5 without charge to recognize that if a game, as our game 6 is -- is free to play, that -- that it -- that a token 7 that would extend play that's already free is not -- 8 does not qualify under that definition of -- as a thing 9 of value. 10 That's essentially the argument we make. We 11 think it's very key that the statute, when it talks 12 about extension of a privilege of playing without 13 charge. Big Fish Casino games are free to play. The 14 vast majority -- pardon me -- of people who play never 15 spend money at all. We've detailed in a declaration 16 that was submitted with our petition, free tokens are 17 awarded to players every day when they sign on to the 18 game, as well as every 30 minutes during gameplay. 19 That's in the Vella declaration. 20 And the problem with the logic of Ms. Kater 21 and her attorneys is that -- and -- and the ESA letter 22 talks about this, too, if in a free game, a token that 23 extends gameplay is considered a thing of value, even 24 playing with chips or tokens that the user acquired for 25 free would be gambling.</p>	<p style="text-align: right;">Page 51</p> <p>1 that guidance, that has been the rule that everyone has 2 been -- has understood and has relied on for all these 3 years. 4 So that's really kind of the narrow focus of 5 our petition. Of course Ms. Kater is seeking her claim 6 in the federal lawsuit is under a different statute, 7 the Recovery of Money Lost at Gambling Act; and so you 8 know, she's portraying that as a right that's at issue 9 here. Really what's at issue here is whether that 10 guidance is accurate that everyone has relied on, 11 whether that prize element is required, and whether 12 extending a game that's already free to play would 13 constitute -- could constitute a thing of value under 14 the statute. 15 VICE CHAIR PATTERSON: Please. 16 MS. HENN: Please. 17 VICE CHAIR PATTERSON: It's free to play, 18 free -- monetarily free, but it's not -- but when you 19 extend it without charge, you are providing 20 entertainment. 21 MS. HENN: Absolutely. We think that -- 22 again, the game is free to play. Most people never 23 spend any money in the game, a vast, vast majority. 24 And -- and we do believe our games provide 25 entertainment value, that that's -- that's the value</p>
<p style="text-align: right;">Page 50</p> <p>1 And it's just inconceivable that the Gambling 2 Act was intended to find gambling where a player risks 3 no money and has no chance to make a profit. And if 4 this game -- if this result were adopted, again the ESA 5 letter points out, it would sweep a vast number of 6 games into the definition of gambling that -- that, you 7 know, we would submit were never intended to be there. 8 Essentially, what our declaratory order 9 petition is seeking is a confirmation, a reaffirmation 10 that what the Commission guidance brochure from 2014 11 said is right. And that's what everyone in this 12 industry, everyone who works in this industry and plays 13 these games has been relying on for many years now. 14 And Mr. Considine referenced this, what that brochure 15 describes is that there are basically three elements 16 when you break them down to gambling; prize, 17 consideration, and chance. 18 And whereas a game that's free to play, but 19 that offers these in-game tokens that may involve 20 consideration and may involve chance, it does not offer 21 any prize; and so it falls outside the definition. And 22 that's -- was very clearly stated in the -- in the 23 brochure back in 2014. And regardless of whether that 24 was a formal act by the Commission of -- of passing -- 25 of -- of -- of publishing that brochure and providing</p>	<p style="text-align: right;">Page 52</p> <p>1 that people get out of them. When people choose to 2 purchase in-game tokens, that's what they're getting in 3 exchange. If they buy tokens, that money is spent. 4 There's no expectation or -- that that money ever would 5 possibly come back to that person. 6 So then when they take those tokens and play 7 games with them, it's not -- they're not playing with a 8 thing of value, because there's no possibility that any 9 money could come back in the form of a prize or 10 otherwise. Those tokens have no real world -- world 11 value. 12 CHAIR SIZEMORE: Okay. 13 COMMISSIONER TROYER: Can -- can you -- I 14 think this would be helpful, Julia. 15 VICE CHAIR PATTERSON: Help me. 16 COMMISSIONER TROYER: And can you explain why 17 the legislature would write, without charge, what that 18 means? 19 MS. HENN: Yes. We think the statute is very 20 purposefully written in that way with those four 21 different categories, each of which references money or 22 property. And in that fourth category, that without 23 charge brings it back to that same idea that in order 24 to be gambling, you have to not only have consideration 25 and chance, but you have to have a prize, something of</p>

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<p style="text-align: right;">Page 53</p> <p>1 value, something of real world value.</p> <p>2 And -- and so when you read the statute and</p> <p>3 you read all those elements or -- or categories of</p> <p>4 thing of value in conjunction, you read them together,</p> <p>5 you should read them consistently with each other and</p> <p>6 the -- the language without charge is -- is critical,</p> <p>7 because it's a different thing if you're extending</p> <p>8 gameplay without charge when you normally would charge</p> <p>9 someone ten dollars, that's -- that's value you're</p> <p>10 getting.</p> <p>11 But when you're extending gameplay that's</p> <p>12 always free, that's something differently entirely.</p> <p>13 And again, the prize element is missing. And that's</p> <p>14 been the understanding of the industry, again, and</p> <p>15 hundreds of thousands maybe a million people who play</p> <p>16 these games in the state.</p> <p>17 We also, in our -- in our -- in our petition</p> <p>18 and in our letter that we submitted after last month's</p> <p>19 hearing, we've talked about some other statutory, some</p> <p>20 other Washington law about how to interpret statutes.</p> <p>21 We've talked about the idea that if they're -- things</p> <p>22 are in a group, that they should be interpreted</p> <p>23 consistently. There's also a principle that if there</p> <p>24 is a general term, it should be interpreted</p> <p>25 consistently with specific -- specifically identified</p>	<p style="text-align: right;">Page 55</p> <p>1 liability.</p> <p>2 And this again gets back to sort of the</p> <p>3 limited purpose of this petition, which is just to ask</p> <p>4 this Commission to settle this uncertainty and clarify</p> <p>5 the existing law as written and as explained in the</p> <p>6 brochure and in place for many years does not</p> <p>7 include -- include this type of virtual token that can</p> <p>8 never be redeemed for anything of real world value,</p> <p>9 does not include it as a thing of value that would</p> <p>10 create -- that would fall within the gambling statute.</p> <p>11 CHAIR SIZEMORE: So we've gone a little bit</p> <p>12 long and really haven't really paid --</p> <p>13 MS. HENN: I apologize.</p> <p>14 CHAIR SIZEMORE: -- much attention to the</p> <p>15 clock, but I think I'll, you know, kind of let you know</p> <p>16 you probably have about three minutes left after -- not</p> <p>17 including Commissioner Troyer's question. So you can</p> <p>18 either use that now or after Mr. Tievsky. So that will</p> <p>19 be your option.</p> <p>20 MS. HENN: All right, thank you very much.</p> <p>21 CHAIR SIZEMORE: Thank you.</p> <p>22 COMMISSIONER TROYER: (Indiscernible).</p> <p>23 MS. HENN: Please.</p> <p>24 COMMISSIONER TROYER: Well, there's a call for</p> <p>25 amusement, and you said there's very few people that</p>
<p style="text-align: right;">Page 54</p> <p>1 items. And again here, you've got money or property</p> <p>2 referenced repeatedly and the idea of things having a</p> <p>3 real world value.</p> <p>4 And -- and we also think it's very important,</p> <p>5 and this is recognized under Washington law, that you</p> <p>6 interpret a statute consistent with its purpose. And</p> <p>7 the Washington Gambling Act's express purpose was to</p> <p>8 keep the criminal element out of gambling without</p> <p>9 restricting participation by individuals in activities</p> <p>10 and social pastimes which are more for amusement rather</p> <p>11 than profit.</p> <p>12 And these games, like many others, are</p> <p>13 unmistakably social pastimes that are played for</p> <p>14 entertainment. They can never be played for profit</p> <p>15 or -- or real world value. So that idea of a criminal</p> <p>16 element, it -- it's just not something that's even an</p> <p>17 issue with these games.</p> <p>18 Another principle of interpreting Washington</p> <p>19 law is that it must be interpreted in accordance with</p> <p>20 the Rule of Lenity, and that's because the Gambling</p> <p>21 Act, as you all well know, imposes criminal penalties</p> <p>22 in certain circumstances. And the Rule of Lenity</p> <p>23 requires that if there are any ambiguities in -- in --</p> <p>24 in construing a statute, they should be construed in a</p> <p>25 manner that limits rather than expands criminal</p>	<p style="text-align: right;">Page 56</p> <p>1 actually buy the chips compared to how many people</p> <p>2 play?</p> <p>3 MS. HENN: That's correct.</p> <p>4 COMMISSIONER TROYER: The ones that are buying</p> <p>5 the chips, why would somebody buy chips? I get from</p> <p>6 you, 19, 20 bucks a month or whatever, why are we</p> <p>7 bringing letters and stories and stuff I look at online</p> <p>8 of people playing thousands and thousands of dollars a</p> <p>9 day playing free -- free -- I mean, it's probably not</p> <p>10 very amusing for them if there's somebody that's got a</p> <p>11 problem and ends up paying thousands of dollars. Why</p> <p>12 don't you have caps on that?</p> <p>13 Why isn't there a 29.95 monthly subscription,</p> <p>14 you never run out if it doesn't -- I mean, basically it</p> <p>15 kind of sounds to me that you've created a way to</p> <p>16 gambling without ever winning for sure. So you know</p> <p>17 going in that you're not going to win no matter how</p> <p>18 much money you pump into it. I mean, who does that?</p> <p>19 Obviously people that have issues.</p> <p>20 And it seems kind of predatory to me.</p> <p>21 Without being -- being a weird analogy, because I -- I</p> <p>22 worked in law enforcement, what happens when a crack</p> <p>23 dealer gives somebody free -- free pieces of crack.</p> <p>24 Here -- here is your first week's for free, and then</p> <p>25 they come back and buy it. I mean, I -- I mean, really</p>

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<p style="text-align: right;">Page 57</p> <p>1 I mean, then they come back and buy it. Well, if you 2 want more, then it's going to cost ya. 3 Because you're looking at a small percentage 4 of the people that are buying the money. I mean, who 5 in their right mind would pay chips for free unless 6 they've got an issue. I -- I mean, that's why I'm 7 having a hard time explaining if anybody actually sits 8 down and plays this for fun for hundreds and hundreds 9 of dollars a month and are actually having fun and 10 aren't just stressed about money, aren't hooked on 11 gambling, or something is wrong; because anybody with 12 anybody common sense, you know. 13 My five-year-old granddaughter won't go stick 14 a quarter in a machine unless it gets out a ticket and 15 she gets a stuffed animal. She's just not going to put 16 the money in there and watch the thing go around. So I 17 mean, it's just that I -- I don't -- that's really 18 where I'm locked up at. 19 MS. HENN: Yeah. And what -- 20 COMMISSIONER TROYER: The evil on the back end 21 of this thing. 22 MS. HENN: Well, I very much appreciate that 23 questions and the comments, because as I said, I -- I 24 want to be sure and get right to the heart of what 25 you're concerned about and thinking about. And I know</p>	<p style="text-align: right;">Page 59</p> <p>1 play a game of chance, and something is at risk that 2 you could get back or you could lose. Here, once 3 that -- once you buy those tokens, everyone knows that 4 money is gone. You're not -- so when you go on to use 5 those tokens, you're seeking the entertainment value, 6 not to get any money back. 7 And that's why this is really different under 8 existing law. And whether some new kind of law might 9 come into place if -- you know, addressing concerns 10 like yours is not really at issue in this petition. It 11 may be for the legislature. It may be, you know, for 12 other bodies to -- to make those sorts of decisions; 13 but what -- what we're looking at is just under 14 existing law. And again, as it's been interpreted and 15 explained for -- since long -- for many, many years, 16 whether these -- 17 COMMISSIONER TROYER: Well, technology -- 18 MS. HENN: -- this model -- 19 COMMISSIONER TROYER: Technology has changed 20 for many, many years and the laws don't, you know? And 21 a lot of the stuff and the technology and things that 22 are out there didn't exist and they weren't even part 23 of what the rules were written for. 24 MS. HENN: I think -- I think -- 25 COMMISSIONER TROYER: You do it on your phone,</p>
<p style="text-align: right;">Page 58</p> <p>1 that the types of issues you're talking about are of -- 2 of great concern to this Commission and -- and laudably 3 so. 4 A couple of responses. I think first it's 5 not true to say, and I know Ms. Kater's comments say 6 this, that it's not free to play. And -- and the 7 evidence in the record is -- is uncontroverted. As 8 Mr. Vella explains, you do get free chips every single 9 day that you log on and every 30 minutes. So it is 10 possible to play for free. It's not -- it's not the 11 case that you have to buy tokens. 12 So then -- then your other question, then why 13 would people do it; and I think the answer is, you 14 know, this is a common model for games, and the reason 15 people pay money to get additional tokens or other 16 in-game virtual items is the entertainment value. And 17 that's not to take away from your -- your concern, 18 which is not about somebody spending two dollars, but 19 somebody spending more; but that -- that's the value 20 they get. 21 And you're absolutely right that once they 22 spend the money, that money is gone. It's not -- 23 that's why it falls outside of the longstanding 24 understanding of gambling, which is when you put 25 something at risk. You -- you pay consideration, you</p>	<p style="text-align: right;">Page 60</p> <p>1 and a lot of those laws were written for that. 2 MS. HENN: That's undoubtedly true that a lot 3 has changed about our world. And it was interesting to 4 hear the discussion of bingo and pull tabs this 5 morning, because lots of things are changing. And 6 absolutely, laws -- new laws get passed to address 7 different things. And may well that could happen, but, 8 you know, this game, the Big Fish Casino games were 9 around, for example, when this brochure was published. 10 And -- and I -- as I understand it, there was 11 a, you know, discussion and a demonstration of how it 12 worked. And -- and you know, the -- the guidance that 13 was put out and has been in place since 2014 was that 14 buying virtual prizes, if a player spends real money 15 for a virtual prize and these items cannot be sold or 16 redeemed for real value or a prize, it's not gambling. 17 And that's kind of what everyone has understood. 18 Now, the law could change, but again we're 19 here just asking for this narrow petition to be 20 decided, which is, does this game fall outside of the 21 definition of gambling. And I'd be happy to reserve my 22 time or answer questions. 23 CHAIR SIZEMORE: Okay, all right. 24 COMMISSIONER STEARNS: I -- I just wanted to 25 just quickly follow up. And what I was --</p>

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<p style="text-align: right;">Page 61</p> <p>1 MS. HENN: Please.</p> <p>2 COMMISSIONER STEARNS: -- saying is that, I</p> <p>3 mean, there -- there is definitely -- you know, we're</p> <p>4 moving to a confluence where between video gaming,</p> <p>5 which I think is almost an archaic term now and -- and</p> <p>6 gambling, there are a lot of activities out there that</p> <p>7 do have or that -- that pose risks for a certain sector</p> <p>8 of our population that will suffer from gambling</p> <p>9 disorder on the gaming side and gaming disorder on --</p> <p>10 on the video side.</p> <p>11 And there's -- there's some excellent work.</p> <p>12 Like -- like Camadare (phonetic) does great work with</p> <p>13 young people who are addicted to video gaming. And</p> <p>14 definitely that's something I -- I think, you know, the</p> <p>15 legislature could take a look at, you know, as things</p> <p>16 become more and more used on a mobile or consoles or --</p> <p>17 or even PCs, just to see where -- you know, how we can</p> <p>18 help people who are, you know, suffer from a disorder.</p> <p>19 So I just wanted to put that as something for us to</p> <p>20 think about. And it's --</p> <p>21 CHAIR SIZEMORE: Did you have a question?</p> <p>22 COMMISSIONER STEARNS: No.</p> <p>23 CHAIR SIZEMORE: Okay.</p> <p>24 COMMISSIONER STEARNS: It's -- it's more of a</p> <p>25 comment.</p>	<p style="text-align: right;">Page 63</p> <p>1 MR. TIEVSKY: That's helpful.</p> <p>2 So I think that -- that Commissioner</p> <p>3 Patterson, when -- when we started out this -- this</p> <p>4 discussion, I -- I think you identified the exact flaw</p> <p>5 in -- in Big Fish's argument here, which is that</p> <p>6 they're basing it and -- and the phrase, common</p> <p>7 understanding of gambling was said over and over and</p> <p>8 over again, and that just means what they think</p> <p>9 gambling is.</p> <p>10 We have -- in Washington, there is -- there</p> <p>11 is a law that defines what thing of value is, and they</p> <p>12 cannot explain why this isn't, why their chips aren't</p> <p>13 something that allows you to play a game or a scheme</p> <p>14 without charge. Their only response to that is, our</p> <p>15 game is free.</p> <p>16 It isn't free. It isn't free. And the way</p> <p>17 you know that is because there are -- they used to be</p> <p>18 owned by Churchill Downs, which is a public American</p> <p>19 company. Public companies have to put out investor</p> <p>20 reports. They're public. The federal government puts</p> <p>21 them out on the website.</p> <p>22 And here's what they say about how they're</p> <p>23 going to take money: Our business depends on</p> <p>24 developing and publishing free to play and premium paid</p> <p>25 casual and mobile games that consumers will download</p>
<p style="text-align: right;">Page 62</p> <p>1 CHAIR SIZEMORE: All right.</p> <p>2 COMMISSIONER STEARNS: Thank you.</p> <p>3 CHAIR SIZEMORE: Do you want to</p> <p>4 (indiscernible) or do you --</p> <p>5 MS. HENN: I -- I'd like to reserve my time.</p> <p>6 I'm happy to answer any other questions.</p> <p>7 CHAIR SIZEMORE: Okay.</p> <p>8 MS. HENN: But I appreciate everyone's time.</p> <p>9 CHAIR SIZEMORE: Okay.</p> <p>10 MS. HENN: Thank you.</p> <p>11 CHAIR SIZEMORE: Well, I -- we're not keeping</p> <p>12 super close time, but we certainly would extend similar</p> <p>13 time to Mr. Tievsky, although there might be bonus</p> <p>14 points if you don't use all your time, I don't know.</p> <p>15 MS. HENN: Thank you very much.</p> <p>16 CHAIR SIZEMORE: That's not true. You're --</p> <p>17 you have the right to the same amount of time.</p> <p>18 MR. TIEVSKY: I appreciate that.</p> <p>19 MR. CONSIDINE: She was on the record about</p> <p>20 ten minutes.</p> <p>21 MR. TIEVSKY: Thank you.</p> <p>22 MR. CONSIDINE: Just to let you know.</p> <p>23 MR. TIEVSKY: Thank you.</p> <p>24 MR. CONSIDINE: (Indiscernible) worry about</p> <p>25 it.</p>	<p style="text-align: right;">Page 64</p> <p>1 and spend time and money on consistently. You -- I --</p> <p>2 I don't understand how you can possibly spend money on</p> <p>3 a game that is always free.</p> <p>4 And the language changed there somewhat. At</p> <p>5 the beginning she said, you can always play it for</p> <p>6 free. And then in response to Commissioner Troyer's</p> <p>7 question, it is possible to play it for free.</p> <p>8 Here's how it actually works, they give you</p> <p>9 some free chips. They give you a bunch when you start,</p> <p>10 and they do, they give you a limited amount on -- at</p> <p>11 certain intervals. You run through those real fast.</p> <p>12 They get you through, depending on what games you play,</p> <p>13 they get you through 15 minutes. It's not very long.</p> <p>14 And then it pops up with a screen and it says, continue</p> <p>15 the fun, 9.99, and that gets you a little bit more.</p> <p>16 Now, when they notice that you start spending</p> <p>17 a lot of money, like -- like Ms. Kelly, who submitted a</p> <p>18 letter, they start reaching out to you and they say,</p> <p>19 hey, you're in our VIP tiers, you know, what can we do</p> <p>20 to help you out? They start sending personal notes.</p> <p>21 And they start telling you things like, you</p> <p>22 know, well, we can give you some more free chips, but</p> <p>23 the amount of free chips we can give you depends on how</p> <p>24 much you've spent recently, recent spend is what they</p> <p>25 call it, until you get to the point where you're like</p>

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<p style="text-align: right;">Page 65</p> <p>1 Ms. Kelly, you've spent more than \$300,000 on the game 2 and you -- you start asking your personal VIP 3 representative, hey, can I have some more chips; and 4 they say things like, well, I'm not really allowed to 5 give you any more free ones right now because we have 6 to base how many free chips we can give you on certain 7 factors, like recent spend, but just this one time I'll 8 give you a few. 9 And this is in response to Ms. Kelly saying 10 things like, I just went through \$400 worth of chips in 11 an hour, a thousand dollars worth of chips in an hour. 12 So to say that this game is -- is free is just a -- 13 it's just a gross -- a gross misstatement. I don't -- 14 I don't think there's anything more real world than 15 cashing out your husband's retirement account and -- 16 and running up huge HELOC loans just to -- to play this 17 game. That's -- that's -- that's real world. 18 So yes, they give away some free play. So 19 does Seven Cedars, so does Alinie (phonetic), so does 20 probably every casino in this state. To get you in the 21 door, they -- that's -- and look, when -- when you're 22 regulated, when the Commission approves these things, 23 that's fine; but this is totally unregulated. They 24 operate not under your oversight in any possible way. 25 I'd like to discuss a little bit, a common</p>	<p style="text-align: right;">Page 67</p> <p>1 what -- what's called -- they -- they call it the 2 machine zone. It's sort of this dissociative state 3 where -- that -- that people get addicted to, that 4 they're -- that they're just sucked into the game. 5 And -- and that's what you see with problem 6 slot machine gamblers. And you see exactly the same 7 thing here. And Professor Schull explains that this 8 is -- this is exactly, exactly the same thing. 9 Let's see, with respect to -- oh, I'm 10 sorry. 11 VICE CHAIR PATTERSON: So I guess I'm -- 12 I'm -- yeah. You were making the point that there is a 13 difference between gambling addiction and gaming 14 addiction. With a gaming addiction, there's never a 15 point where the game will come and say, for 99 cents -- 16 MR. TIEVSKY: (Indiscernible) out. I mean, 17 there are -- there are plenty of console games and PC 18 games, you know, over Washington. You can spend lots 19 of money. 20 VICE CHAIR PATTERSON: Uh-huh. 21 MR. TIEVSKY: But it -- I mean, it -- it's 22 like -- but the -- the question is, is that gambling or 23 is that not, so -- 24 VICE CHAIR PATTERSON: Okay. 25 MR. TIEVSKY: -- but the same addictive</p>
<p style="text-align: right;">Page 66</p> <p>1 understanding of gambling. So there's a case from a 2 few years ago that the Commission was involved in 3 called Bullseye, Bullseye involved a machine that you 4 got to play for free every day. Everyone got a free 5 play, but then if you wanted to play more after that, 6 then you had to put in money. 7 And the Commission argued to the court, hey, 8 it doesn't matter that you can play for free every day, 9 it's still gambling, and the Court of Appeals agreed 10 with the Commission. And that's what the Ninth Circuit 11 relied upon when it said, you know, it doesn't matter 12 that -- that you can't cash out. It doesn't matter 13 that they give you free chips sometimes. That's -- 14 that's not relevant. 15 The point is, they have value because people 16 have to buy them to keep playing the game. They extend 17 the privilege of playing the game for free. 18 VICE CHAIR PATTERSON: But continuing to play 19 for some is more valuable than actually winning money. 20 MR. TIEVSKY: That's correct. And that's -- 21 that's what Professor Schull explains in her book 22 and -- and in the -- in the letter she kindly submitted 23 that -- that yes, for -- for people who are -- 24 particularly people who are addicted to machine 25 gambling, that what they're looking for is to in</p>	<p style="text-align: right;">Page 68</p> <p>1 qualities are there. I mean (indiscernible) but that 2 also applies to definitely things that are not 3 gambling, as well as these (indiscernible). 4 COMMISSIONER STEARNS: I -- I think -- oh, 5 can -- I'll let -- I'll let Commissioner Troyer go 6 ahead. 7 CHAIR SIZEMORE: Yeah, real quick, 8 Commissioner Troyer. 9 COMMISSIONER TROYER: Just because I want to 10 ask you guys, did you set something that you could 11 spend up to \$400 in an hour, \$250 or \$400 an hour? Is 12 that -- is that actually possible? If you're the worst 13 poker player or the worst slot player, well, can you 14 actually put \$400 into this and make it disappear in an 15 hour? 16 CHAIR SIZEMORE: Well, she'll come back if you 17 want to ask her that. 18 COMMISSIONER TROYER: Okay, all right. I 19 just -- he -- he said that, I just wanted to -- 20 CHAIR SIZEMORE: Yeah. 21 COMMISSIONER TROYER: -- make sure. I -- I 22 don't -- you know, that's -- that's a pretty big 23 statement. 24 CHAIR SIZEMORE: Right. 25 COMMISSIONER TROYER: I just wanted to make</p>

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<p style="text-align: right;">Page 69</p> <p>1 sure that that's actually a real thing.</p> <p>2 MR. TIEVSKY: Yeah, it's -- it's a real thing,</p> <p>3 maybe -- maybe even more than that. There's no limits</p> <p>4 on -- on how much -- on how much folks can spend. It</p> <p>5 is -- it is an awful lot of money. As far as the --</p> <p>6 the video game question, I think part -- part of the</p> <p>7 reason that this is gambling as opposed to some of the</p> <p>8 video games and other things we're talking about is</p> <p>9 that you have to -- well, first of all, it's -- it's</p> <p>10 completely a game of chance, which is part of the</p> <p>11 gambling rules in -- in the state. There's no -- these</p> <p>12 are slot machines. There's nothing the players can do</p> <p>13 to affect the outcome. That's part of it.</p> <p>14 The other part of it is you have to pay to</p> <p>15 continue. So it's not a matter of paying to, you</p> <p>16 know -- to enhance your gameplay, to get a -- to get a</p> <p>17 better soccer player or to -- to, you know, to get</p> <p>18 something that looks cool, right? It's either you pay</p> <p>19 or you stop. And -- and that's the really</p> <p>20 psychologically powerful part that Professor Schull</p> <p>21 talks about in her research.</p> <p>22 MR. CONSIDINE: You've got two minutes.</p> <p>23 MR. TIEVSKY: Thank you.</p> <p>24 So I -- in my end of my time, I'd like to</p> <p>25 address the -- the pamphlet that the Commission put out</p>	<p style="text-align: right;">Page 71</p> <p>1 Commission has always said is -- is not accurate.</p> <p>2 The -- the Commission has never come to a -- to a</p> <p>3 consensus that, well, obviously Big Fish Games isn't</p> <p>4 gambling, you know, that is -- that is very, very much,</p> <p>5 and as Commissioner Troyer mentioned earlier an -- an</p> <p>6 open question.</p> <p>7 And let's see, I will -- I will -- I will end</p> <p>8 with this, if this game is free, I do not understand</p> <p>9 how the company is worth almost a billion dollars and</p> <p>10 how they've made a hundred -- one year publicly</p> <p>11 reported profits on just the casino portion of the</p> <p>12 game, \$180 million. I -- I don't understand how you</p> <p>13 can do that with a game that -- that, as -- that, as</p> <p>14 their counsel said, is always free. Those things don't</p> <p>15 add up.</p> <p>16 I'm happy to answer any other questions.</p> <p>17 CHAIR SIZEMORE: Thank you.</p> <p>18 MR. TIEVSKY: Thank you.</p> <p>19 MS. HENN: You've all been very patient and</p> <p>20 generous with your time, so I'll keep this brief, but I</p> <p>21 do appreciate just a few minutes --</p> <p>22 CHAIR SIZEMORE: Uh-huh.</p> <p>23 MS. HENN: -- to address, to respond a little</p> <p>24 bit. I think what you've just heard and what you see</p> <p>25 in the comments that have been submitted, several of</p>
<p style="text-align: right;">Page 70</p> <p>1 a few years ago. So when I say the Commission put it</p> <p>2 out, it is a -- it is a two-page like a tri-fold</p> <p>3 pamphlet that Director Trujillo and his staff put</p> <p>4 together several years ago. There's -- there's no</p> <p>5 indication -- I asked for records about this, there's</p> <p>6 no indication that any commissioner ever saw it, that</p> <p>7 there was ever a vote on it. You know, it's -- it's</p> <p>8 something that staff put together to -- to have in the</p> <p>9 lobby basically, based on -- based on their</p> <p>10 understanding.</p> <p>11 But the -- the staff does great work here.</p> <p>12 Every -- every staff member I've interacted with has</p> <p>13 been outstanding, but it's the Commission that sets the</p> <p>14 policy here. And I -- I don't think -- I think it</p> <p>15 would be a mistake for the Commission to feel hamstrung</p> <p>16 by something that -- that staff put together based</p> <p>17 on -- based on their understanding.</p> <p>18 And if you look at documents from around that</p> <p>19 time in 2013, this was brought, Big Fish, in fact, in</p> <p>20 particular was brought to the Commission; and the chair</p> <p>21 of the Commission at that time, Mr. Velez had</p> <p>22 questioned, said, well, wait a minute, this kind of</p> <p>23 sounds like gambling to me.</p> <p>24 So -- so the idea that this has been some</p> <p>25 sort of -- that -- that we're just confirming what the</p>	<p style="text-align: right;">Page 72</p> <p>1 them, is an argument about expanding or changing</p> <p>2 existing law and perhaps regulating things that are not</p> <p>3 currently regulated under Washington's Gambling Act.</p> <p>4 What you didn't hear was an argument about why the</p> <p>5 staff's brochure that was in place starting in 2014 is</p> <p>6 wrong based on the three traditional requirements for</p> <p>7 something to be gambling; the -- the consideration,</p> <p>8 chance, and -- and prize.</p> <p>9 And -- and that's really the key reason, we</p> <p>10 think, under existing law it's pretty clear that our</p> <p>11 games don't -- don't fall within that statute, and that</p> <p>12 is what this petition, the narrow question this</p> <p>13 petition is raising is whether Big Fish Casino games</p> <p>14 are gambling under existing law, not what future law</p> <p>15 might look like or how, if one were going to regulate</p> <p>16 these games, how one might do it.</p> <p>17 Just to respond to the points that</p> <p>18 Mr. Tievsky made about how this game could possibly be</p> <p>19 free, it's -- it's -- the facts are very plain that</p> <p>20 free tokens are given every day, given every</p> <p>21 30 minutes; that the vast majority, I think it's over</p> <p>22 90 percent, and we could submit evidence on that if</p> <p>23 you'd prefer it in a sworn declaration, of people never</p> <p>24 pay money. So it's just not correct for Mr. Tievsky to</p> <p>25 claim otherwise.</p>

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<p style="text-align: right;">Page 73</p> <p>1 These games are free to play and most people 2 play them that way. Others choose to -- to -- to buy 3 virtual coins for their entertainment value, to extend 4 game time, to allow them to make bigger, you know, 5 different kinds of bets in games. And again, the -- 6 the -- the -- the thing that's key about this is once 7 people purchase those tokens, their money is spent, 8 then they go and play the game. And if they -- if -- 9 if they consume chips, it's they're doing that as part 10 of the entertainment of the game. There's never any 11 real world value to those -- to those coins. 12 Arguments about revenues that Big Fish Games 13 takes in just aren't -- I -- I -- I would submit that 14 they're sort of to divert attention from the -- the 15 narrow legal issue here, because that -- that's not at 16 all relevant under the statute to whether this is 17 gambling. We've talked through the elements, and I 18 appreciated the focus on -- on the statutory language, 19 which is extending game time without charge. 20 When this game is free to play, we submit 21 that it just doesn't fall under the statute, that it's 22 been clear for many years, and many have relied on that 23 interpretation in playing and making these games. 24 VICE CHAIR PATTERSON: So that profit that the 25 company is making is substantial, and you just said</p>	<p style="text-align: right;">Page 75</p> <p>1 VICE CHAIR PATTERSON: Okay. 2 MS. HENN: If the Commission would like to 3 know that, I can definitely find out more, but -- but 4 again -- 5 VICE CHAIR PATTERSON: Well, I guess my point 6 of my -- 7 MS. HENN: Please. 8 VICE CHAIR PATTERSON: -- question is that if 9 ten percent of your players are generating an enormous 10 amount of money, that sounded like an enormous amount 11 of money to me, I would think that that ten percent 12 is -- is spending an enormous amount of money, maybe 13 that ten percent has a problem. Maybe they're getting 14 something of value that would result in them providing 15 enormous profits, enormous profits to that company. 16 That's just what I'm thinking right now. 17 MS. HENN: No, and I -- I appreciate that, and 18 I -- and I think Commissioner Troyer made comments that 19 were similar about focus on that concern. I do think, 20 you know, this is a quite common model of freemium games 21 where there are in-app purchases available and 22 Electronic Software Association makes that argument as 23 well in its -- in its submission. 24 But again getting to the statute and how 25 gambling is defined under Washington State law, I would</p>
<p style="text-align: right;">Page 74</p> <p>1 that that profit is being provided by ten percent of 2 the people who play. 3 MS. HENN: I don't have the exact percentage 4 here, but it's -- it's definitely true, and I -- and as 5 I said, we can submit evidence about it if -- if the 6 Commission wants more information, that over 90 percent 7 never spend money. 8 VICE CHAIR PATTERSON: Okay. So the ten 9 percent then are spending a heck of a lot of money. I 10 mean -- 11 CHAIR SIZEMORE: Or is it -- 12 VICE CHAIR PATTERSON: -- the ten percent 13 might have a problem. 14 CHAIR SIZEMORE: Is there -- 15 VICE CHAIR PATTERSON: I mean, they're -- 16 CHAIR SIZEMORE: -- ad revenue? 17 VICE CHAIR PATTERSON: Pardon me? 18 CHAIR SIZEMORE: I said -- I'm just curious if 19 there's ad revenue. 20 VICE CHAIR PATTERSON: Is there -- I mean, is 21 that -- what -- where else do you get revenue from? 22 MS. HENN: I -- I don't want to misstate 23 anything because I didn't study up on this -- 24 CHAIR SIZEMORE: Okay. 25 MS. HENN: -- and ask my client. So I --</p>	<p style="text-align: right;">Page 76</p> <p>1 submit that those issues that are -- that -- that I 2 know the Commission is very concerned about with 3 responsible play and -- is really about, if this were 4 gambling or if the law changed so that it was 5 regulated, how you might do that. 6 Whereas under existing law, it's pretty clear 7 that that third element of the prize is missing here 8 because nothing of real world value is -- is at stake 9 when people play these games. Nothing -- the tokens 10 can never be converted into cash or money or anything 11 of real world value. And that's really what the -- 12 what the brochure described and explained. 13 And again, you know, there are many, many 14 games that kind of do this same model where it's free 15 for -- free or you can choose to buy things. And the 16 value you get from those purchases is the entertainment 17 value, not a thing of value as defined under the law to 18 require -- as -- as required under the law to make it 19 gambling. 20 CHAIR SIZEMORE: All right. I think your time 21 is just about expired, but -- 22 MS. HENN: Right. 23 CHAIR SIZEMORE: -- Commissioner Troyer has a 24 question. 25 COMMISSIONER TROYER: I just wanted to come</p>

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<p style="text-align: right;">Page 77</p> <p>1 back to the same thing I asked you before, can you</p> <p>2 spend \$250, \$400 an hour playing.</p> <p>3 MS. HENN: I'm not aware that -- that</p> <p>4 there's -- I think that that may well be true. I don't</p> <p>5 think there's a limit that I'm aware of in terms of</p> <p>6 what you can play or what -- what, you know, how many</p> <p>7 tokens you --</p> <p>8 COMMISSIONER TROYER: I mean, is it</p> <p>9 possible --</p> <p>10 MS. HENN: -- can put --</p> <p>11 COMMISSIONER TROYER: -- that the machine in</p> <p>12 the program will let you spend that much money in an</p> <p>13 hour playing, yes or no?</p> <p>14 MS. HENN: I -- I would want -- before I</p> <p>15 answer like a factual question like that, I think I</p> <p>16 would want to --</p> <p>17 COMMISSIONER TROYER: Okay.</p> <p>18 MS. HENN: -- double check with my client, but</p> <p>19 again, I think -- and -- and I'd be happy to do that</p> <p>20 if -- if the Commission would like.</p> <p>21 CHAIR SIZEMORE: Okay.</p> <p>22 MS. HENN: But I think the key part, again, is</p> <p>23 while there is consideration and while there is a game</p> <p>24 of chance here, there is no money ever coming out.</p> <p>25 There is nothing of value. These things can't be</p>	<p style="text-align: right;">Page 79</p> <p>1 COMMISSIONER TROYER: -- where I'm coming from</p> <p>2 on the whole thing. It seems like every time we talk</p> <p>3 and the more I get to know about this, the worse it</p> <p>4 sounds. That's just to be honest with you.</p> <p>5 MS. HENN: I --</p> <p>6 CHAIR SIZEMORE: All right.</p> <p>7 MS. HENN: I think just in response, you know,</p> <p>8 the entire industry relies on knowing what the law is</p> <p>9 and -- and -- and being able to read the law and</p> <p>10 understand it. And this Commission plays an important</p> <p>11 role in interpreting --</p> <p>12 COMMISSIONER TROYER: Right, but you guys --</p> <p>13 MS. HENN: -- the law.</p> <p>14 COMMISSIONER TROYER: -- that were the one who</p> <p>15 came and brought this up to us.</p> <p>16 MS. HENN: Because of the uncertainty.</p> <p>17 COMMISSIONER TROYER: Right.</p> <p>18 MS. HENN: That's correct. And we're just</p> <p>19 asking the Commission to interpret the law that's on</p> <p>20 the books.</p> <p>21 CHAIR SIZEMORE: All right. So thank you.</p> <p>22 SENATOR CONWAY: I have one.</p> <p>23 CHAIR SIZEMORE: Senator Conway.</p> <p>24 SENATOR CONWAY: From -- from the legislative</p> <p>25 side here, how many -- how many Washingtonians play Big</p>
<p style="text-align: right;">Page 78</p> <p>1 converted to a thing of value.</p> <p>2 COMMISSIONER TROYER: So --</p> <p>3 MS. HENN: So prize or a thing of value.</p> <p>4 COMMISSIONER TROYER: -- I'd like to actually</p> <p>5 know that. And -- and so putting it into perspective,</p> <p>6 if you had an elderly parent that was spending \$500 a</p> <p>7 day doing this, what would you do about it? Just think</p> <p>8 about that. I want to know that question. Is there</p> <p>9 protections for somebody that gets -- like casinos can</p> <p>10 tell people are gambling a lot of money and they can</p> <p>11 sell -- they can ban people, they can recognize problem</p> <p>12 gambling.</p> <p>13 Do you have a mechanism in place where</p> <p>14 someone is spending \$500 a day spending free cards to</p> <p>15 stop that? I'd like to know that, if -- if -- if</p> <p>16 that's a possibility. And then also, it's starting to</p> <p>17 sound like your argument is boiling down to</p> <p>18 technicality that's in a piece of paperwork or -- or an</p> <p>19 old law or somewhere in a brochure and not what's</p> <p>20 really happening. And so we're -- I guess we're going</p> <p>21 to have to take a look --</p> <p>22 CHAIR SIZEMORE: Yeah.</p> <p>23 COMMISSIONER TROYER: -- a look at that, but I</p> <p>24 mean, you know --</p> <p>25 CHAIR SIZEMORE: Okay.</p>	<p style="text-align: right;">Page 80</p> <p>1 Fish?</p> <p>2 VICE CHAIR PATTERSON: (Indiscernible).</p> <p>3 CHAIR SIZEMORE: Oh, hold on a second.</p> <p>4 Senator Conway.</p> <p>5 MS. HENN: That is in the Vella declaration,</p> <p>6 and I believe it's upwards of 700,000 who have</p> <p>7 downloaded the game that's geo-located -- with a</p> <p>8 geo-location in Washington State. Let me double check</p> <p>9 that so I'm sure that I gave you the right -- the right</p> <p>10 number. More than 865,000 installations of this game</p> <p>11 have come from an IP address geo-located in the State</p> <p>12 of Washington.</p> <p>13 SENATOR CONWAY: And am I right in assuming</p> <p>14 that ten percent of those people are paying for chips?</p> <p>15 MS. HENN: I don't know that number. I --</p> <p>16 what I came here knowing was that over 90 percent play</p> <p>17 for free, but if you want the precise number of --</p> <p>18 SENATOR CONWAY: I -- I do.</p> <p>19 MS. HENN: -- people who pay, I can find --</p> <p>20 SENATOR CONWAY: I'm a --</p> <p>21 MS. HENN: -- out.</p> <p>22 SENATOR CONWAY: -- legislator here. You</p> <p>23 know, I think that --</p> <p>24 MS. HENN: Yes.</p> <p>25 SENATOR CONWAY: -- that we'd like some facts,</p>

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<p style="text-align: right;">Page 81</p> <p>1 okay? Thank you.</p> <p>2 MS. HENN: Yes, absolutely. We'd be happy to</p> <p>3 submit that.</p> <p>4 CHAIR SIZEMORE: Commissioner Patterson, you</p> <p>5 had another?</p> <p>6 VICE CHAIR PATTERSON: I don't know.</p> <p>7 CHAIR SIZEMORE: Okay.</p> <p>8 VICE CHAIR PATTERSON: I -- I'm just really</p> <p>9 struck by the fact that ten percent of the players are</p> <p>10 making that much money for your company. I mean, what</p> <p>11 is it about --</p> <p>12 CHAIR SIZEMORE: Well --</p> <p>13 VICE CHAIR PATTERSON: -- that -- that ten</p> <p>14 percent? Why -- why would they spend all that money?</p> <p>15 Why -- why isn't the money coming equally from a</p> <p>16 hundred percent of your players?</p> <p>17 MS. HENN: It's --</p> <p>18 VICE CHAIR PATTERSON: So it --</p> <p>19 CHAIR SIZEMORE: Well --</p> <p>20 VICE CHAIR PATTERSON: That's all.</p> <p>21 CHAIR SIZEMORE: Okay.</p> <p>22 VICE CHAIR PATTERSON: Yeah.</p> <p>23 CHAIR SIZEMORE: All right.</p> <p>24 MR. CONSIDINE: And -- and I think those are</p> <p>25 information that they're clearly willing to try and</p>	<p style="text-align: right;">Page 83</p> <p>1 MR. CONSIDINE: I -- I would --</p> <p>2 CHAIR SIZEMORE: Not a quorum, mind you.</p> <p>3 MR. CONSIDINE: Right.</p> <p>4 CHAIR SIZEMORE: Just two. The -- we have a</p> <p>5 space?</p> <p>6 MR. CONSIDINE: We do.</p> <p>7 CHAIR SIZEMORE: Okay. So --</p> <p>8 MR. CONSIDINE: I -- I would just see -- just</p> <p>9 so that we can close this down before you go, is there</p> <p>10 anybody from the public that wants to provide any more</p> <p>11 comments on Big Fish petition in general? That way, if</p> <p>12 there was anything else --</p> <p>13 CHAIR SIZEMORE: Okay.</p> <p>14 MR. CONSIDINE: -- now is the time.</p> <p>15 CHAIR SIZEMORE: Okay. I will extend that</p> <p>16 offer, if you didn't hear. If there's anyone from</p> <p>17 the -- from the audience that would like to add</p> <p>18 something to the record on this Big Fish petition. It</p> <p>19 doesn't appear that we have anyone. So we are going to</p> <p>20 go into closed session, estimated 15 to 20 minutes, and</p> <p>21 then we'll return and let you know what we are going to</p> <p>22 do next.</p> <p>23 (Off the record)</p> <p>24 (On the record)</p> <p>25 CHAIR SIZEMORE: All right. We are back in</p>
<p style="text-align: right;">Page 82</p> <p>1 give you and --</p> <p>2 CHAIR SIZEMORE: Right.</p> <p>3 MR. CONSIDINE: -- that might be best</p> <p>4 formulated when you go into closed session if you want</p> <p>5 more information, how to -- how to do that.</p> <p>6 CHAIR SIZEMORE: Right.</p> <p>7 MR. CONSIDINE: I would just say, Mr. Chair,</p> <p>8 to give anyone else that's here today a chance to</p> <p>9 comment or see if anyone wants to comment before we --</p> <p>10 we break for the --</p> <p>11 CHAIR SIZEMORE: Yeah.</p> <p>12 MR. CONSIDINE: -- a closed session since</p> <p>13 we're running up into the noon hour.</p> <p>14 CHAIR SIZEMORE: Yep. So -- so thank you.</p> <p>15 MS. HENN: Thank you very much.</p> <p>16 VICE CHAIR PATTERSON: Thank you.</p> <p>17 CHAIR SIZEMORE: So I am offering the</p> <p>18 opportunity for any other interested party in this</p> <p>19 petition for declaratory order in regards to the thing</p> <p>20 of value component of this -- of this matter, if there</p> <p>21 is anyone else that would like to come add something to</p> <p>22 the record. It does not appear that there is.</p> <p>23 So I would propose, maybe we've got two</p> <p>24 commissioners already that decided to go to closed</p> <p>25 session early.</p>	<p style="text-align: right;">Page 84</p> <p>1 open session. And on the matter of Big Fish Games</p> <p>2 petition for declaratory order, we will be setting this</p> <p>3 matter over until our October commission meeting for</p> <p>4 further consideration and decision. The comments</p> <p>5 submitted so far require serious thought and serious</p> <p>6 consideration and deal with complex issues of statutory</p> <p>7 interpretation. For these reasons, good cause exists</p> <p>8 to extend the statutory limits set forth in RCW</p> <p>9 34.05.240.</p> <p>10 So the Commission has signed an order of --</p> <p>11 to that effect, and we will -- we will not be having</p> <p>12 any further oral arguments on the matter. Any</p> <p>13 additional information that would like to -- that</p> <p>14 people would like to include in the record would need</p> <p>15 to be submitted to Brian Considine by September 30th.</p> <p>16 And -- and then we will announce some sort of decision</p> <p>17 in October.</p> <p>18 So --</p> <p>19 VICE CHAIR PATTERSON: (Indiscernible).</p> <p>20 CHAIR SIZEMORE: Is the closing of additional</p> <p>21 information.</p> <p>22 So, Brian.</p> <p>23 MR. CONSIDINE: Would you like to give a time</p> <p>24 on that, like 5:00 p.m. Pacific Time?</p> <p>25 CHAIR SIZEMORE: Sure, 5:00 p.m. Pacific</p>

HEARING
IN RE PETITION OF BIG FISH GAMES

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<p style="text-align: right;">Page 85</p> <p>1 Time --</p> <p>2 MR. CONSIDINE: Thank you.</p> <p>3 CHAIR SIZEMORE: -- on September 30th to be</p> <p>4 included in the record. So with that, it completes our</p> <p>5 work on the petition for declaratory order for this</p> <p>6 meeting. And so our next -- next act is, we will be</p> <p>7 going into executive session to discuss pending</p> <p>8 investigations.</p> <p>9 - - -</p> <p>10 (Whereupon, the proceedings were concluded)</p> <p>11 - - -</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	
<p style="text-align: right;">Page 86</p> <p>1 STATE OF WASHINGTON)</p> <p>2) SS:</p> <p>3 COUNTY OF WHATCOM)</p> <p>4</p> <p>5 I, CHRISTINE AIELLO, do hereby certify</p> <p>6 that I transcribed the audio, and that the foregoing is</p> <p>7 a true and complete transcription of the audio</p> <p>8 transcribed under my personal direction.</p> <p>9 IN WITNESS WHEREOF, I do hereunto set my</p> <p>10 hand at Blaine, Washington, this 27th day of August,</p> <p>11 2018.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17 _____</p> <p>18 Christine Aiello</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	